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Submitted
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AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~1430.~~ 883

THE DISTRICT TOWNSHIP OF DOON, IN LYON COUNTY, STATE OF IOWA, PLAINTIFF IN ERROR,

vs.

THERON CUMMINS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

FILED OCTOBER 17, 1890.

917

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No. 1430.

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vs.

THERON CUMMINS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

INDEX.

	Original.	Print.
Stipulation as to parts of record to be printed	*a*	1
Synopsis of petition	*a*	1
Caption (omitted in printing)	1	—
Petition (omitted in printing)	2	—
Exhibits 1 to 160—Coupons (omitted in printing)	162	—
Answer	188	3
Stipulation waiving jury, &c.	191	5
Præcipe for appearance for plaintiff (omitted in printing)	192	—
Præcipe for appearance for defendant (omitted in printing)	193	—
Evidence before Wm. E. Davis, commissioner (omitted in printing)	193	—
Stipulation appointing commissioner	194	—
Stipulation as to evidence	195	—
Plaintiff's evidence	196	—
Defendant's evidence	197	—
Testimony of H. D. Rice	197	—
Records of Doon township	201	—
Testimony of John Thompson	207	—
Copies of bonds	212	—
Answer in Cheney case	213	—
Testimony of B. L. Richards	217	—
Receipts, &c.	219	—

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 25, 1890.

	Original.	Print.
Testimony of H. G. McMillan (Omitted in printing)	224	—
John Case " "	229	—
Thomas Thorson " "	230	—
A. Van Wagenon " "	238	—
Plaintiff's evidence " "	245	—
Testimony of A. H. A. Nichols " "	245	—
Exhibits offered " "	258	—
Testimony of B. L. Richards " "	262	—
A. Van Wagenen " "	274	—
Exhibit O—Statement of account " "	278	—
Defendant's evidence continued " "	281	—
Testimony of H. G. McMillan " "	281	—
Exhibits, &c. " "	281	—
Opinion (part omitted in printing)	294	5
Judgment	312	8
Writ of error (copy)	328	17
Bond	330	18
Citation (copy)	332	19
Clerk's certificate (omitted in printing)	333	—
Writ of error (original) (omitted in printing)	334	—
Assigment of errors	335	20
Citation (original) (omitted in printing)	337	—
Clerk's certificate (omitted in printing)	338	—

a In the Supreme Court of the United States.

THE DISTRICT TOWNSHIP OF DOON, Lyon County, Iowa, Plaintiff in Error,
vs.
THERON CUMINS, Defendant in Error.
} Agreement as to the Parts of the Record to be Printed.

The following parts of the transcript of the record in the above-entitled cause it is agreed between the parties are the parts or portions requisite and necessary to be printed for the submission and determination of the cause, to wit: That portion of the petition which is as follows, being a synopsis thereof, and sufficient to show and disclose fully the cause of action and relief sought, to wit:

In the Circuit Court of the United States, Northern District of Iowa, Western Division.

THERON CUMINS, Plaintiff,
vs.
THE DISTRICT TOWNSHIP OF DOON, Lyon County, Iowa, Defendant.
} Petition.

Count I.

Plaintiff for cause of action states—

That plaintiff is a citizen of the State of Illinois.

That on or about the 11th day of July, A. D. 1881, the defendant, a body corporate, duly organized and existing under and by virtue of the laws of the State of Iowa, made, executed, and issued under the provisions of chapter one hundred and thirty-two, Laws
b of the Eighteenth General Assembly of Iowa, its certain bond, numbered one (1), for one thousand dollars, payable to Theron Cumins, plaintiff herein, with interest thereon at the rate of seven per cent. per annum, said interest payable semi-annually at the Bank of Rock Rapids, Rock Rapids, Iowa, as evidenced by the twenty coupons thereto attached, and numbered from one to twenty, for which plaintiff paid to the defendants, on receipt of same, the sum of one thousand dollars.

That said coupon numbered nine (9), attached to said bond, is now past due and wholly unpaid; that plaintiff is the owner and holder thereof; that he presented said coupon for payment at the said Bank of Rock Rapids at the time the same became due, and payment was refused.

A true and correct copy of said coupon is hereto attached, marked "Exhibit 1," and made a part hereof.

That there is now due thereon and unpaid the sum of thirty-five dollars, with interest from the 11th day of January, A. D. 1886, at the rate of six per cent. per annum.

EXHIBIT 1.

$35.00. The treasurer of the school district of Doon, Lyon Co., Iowa, will pay to the bearer hereof January 11, 1886, at the Bank of Rock Rapids, thirty-five dollars for interest on bond No. 1, dated July 11, 1881, issued under provision of chapter 132, Laws of the 18th Gen'l Assembly.

J. SHATSWELL, *President.*

L. H. WAGNER, *Secretary.*

Then follows as a part of same petition one hundred and fifty-nine counts on coupons, all the same as above, except number and date—160 counts—amounting in the aggregate to $5,600 and interest, and concluding with the usual prayer for judgment.

Second.

The answer filed by the district township of Doon, in Lyon county, Iowa, to this petition, the answer to be printed entirely.

c

Third.

The stipulation waiving a jury.

Fourth.

The opinion of the court below. (The finding of facts constituting a part of this opinion will be omitted at this point, as the findings are set out in full in the judgment entry, and thus made a part of the record by order of the court below, and they will be found printed in connection with the judgment of the court below.)

Fifth.

The judgment of the court below, including the finding of facts embraced therein, and including the report of B. L. Richards, made a part thereof.

Sixth.

The writ of error.

Seventh.

The bond.

Eighth.

The citation.

Ninth.

The assignment of errors.

B. F. KAUFFMAN,
Attorney for Plaintiff in Error.
J. H. SWAN,
Attorney for Defendant.

[Endorsed:] Sup. Court U. S.. 1890, Oct'r term. No. 1430. The District Township of Doon, Lyon Co., Iowa, pl'ff in error, *vs.* Theron Cummins. Stipulation as to parts of record to be printed. Filed Nov. 11, 1890.

* * * * * * *

1–188 And afterwards, to wit, on the 5th day of October, 1889, there was filed in the office of the clerk of the said court the answer of the defendant in the said cause; which said answer is in words and figures as follows, to wit:

Answer.

In the Circuit Court of the United States in and for the Northwestern District of Iowa.

THERON CUMINS
vs.
DISTRICT TOWNSHIP OF DOON, Lyon Co., Iowa. } Answer.

The defendant, The District Township of Doon, in Lyon Co., Iowa, for answer to plaintiff's petition in above-entitled cause now on file—

Denies each and every allegation therein contained which is not specifically admitted.

Further answering, defendant states that the coupons sued on in this cause are coupons Nos. 9 to 16, inclusive, detached from twenty bonds, numbered one (1) to twenty (20), inclusive, which bonds are the first twenty of an issue of twenty-five bonds of a denomination of one thousand — each, numbered from one (1) to twenty-five (25), inclusive, purporting to have been issued by the defendant, District Township of Doon, Lyon Co., Iowa, on or about the 11th day of July, 1881.

The bonds from which the coupons involved in this suit were taken, to wit, first twenty, numbered from 1 to 20, inclusive, were issued direct to plaintiff herein at or about the date of said bonds.

189 Said bonds and the coupons involved in this suit were issued in violation of section 3, article XI, of the constitutton of the State of Iowa, and are therefore null and void.

At the time said coupons and bonds were issued, to wit, July 11th, 1881, this defendant, The District Township of Doon, in Lyon Co., Iowa, had no power or authority to create an indebtedness in any manner or for any purpose whatever in excess of the sum of six thousand five hundred and fifty-one and $\frac{90}{100}$ ($6,551.90) dollars, that being 5% of the assessed value of all the real and personal property within the said district township of Doon, as shown by the last State and county tax-lists previous to the issuance of said bonds.

The total assessed valuation of all property within said district township of Doon was as follows:

For the year of 1880 the sum of	131,038 00
" " " " 1881 " " "	136,727 00

as shown by the State and county tax-lists.

None of the coupons sued on in this cause and none of the bonds to which they were attached were issued for the purpose of refunding or paying any part of the outstanding indebtedness, and none of the

proceeds of either were in fact used as refunding or paying any part of any outstanding legal indebtedness, and at the time of issuance of said bonds and coupons attached, including those involved in this suit, the said district township of Doon had an outstanding legal indebtedness equal to 5% of the assessed value of all the property situated within said district township, and had no power under the constitution and laws to create any other and greater indebtedness in any manner or for any purpose whatever.

Further answering, the defendant says that said bonds were not issued in compliance with chapter 132 of the Laws of the 18th
190 General Assembly, but, on the contrary, in violation thereof.

Said bonds were not issued for the purpose of refunding outstanding bonded indebtedness or for any other purpose authorized by said act or any other law of Iowa, and in fact none of the proceeds of said bonds issued to or now held by this plaintiff and none of the proceeds of the bonds from which the coupons in this suit were taken were in fact applied to the payment or refunding of any part of the outstanding legal indebtedness of said district township whatever.

All the bonded indebtedness, both legal and illegal, did not in the aggregate amount to so much as half the proceeds of the bonds purporting to have been issued to this plaintiff, and then five were issued for other purposes than to refund outstanding bonded indebtness.

Further answering, defendant denies that said bonds were legally issued or signed by said officers, and denies that any legal resolution or action of the board of directors or other authorities of the district township was ever had or taken. Wherefore said bonds are void; and defendant denies that said bonds are the act or obligation of The District Township of Doon, def't, or any of its officers.

Further answering, defendant says that said bonds are fraudulent and without consideration or any valuable thing whatever moving to this defendant, and are, therefore, illegal and void.

Wherefore defendant prays that judgment be rendered by this hon. court declaiming said bonds and coupons null and void; that plaintiff's petition be dismissed, and defendant have judgment for costs.

VAN WAGENEN & McMILLAN,
B. F. KAUFFMAN,
Att'ys for Defendant, The District T'p Doon, Lyon Co., Iowa.

191 STATE OF IOWA, } *ss:*
Lyon County, }

I, —— ——, on oath, being duly sworn, depose and say that I am one of counsel for the def't. I have read the foregoing answer of the District Township of Doon. I have personal knowledge of the facts therein stated. I am better acquainted with the facts therein alleged than is def't or any of its officers, and all the allegations in said answer are true, as I verily believe.

—— ——.

Subscribed and sworn to before me by —— —— this 11th day of May, 1888.

——— ———,

Notary Public in and for Lyon County, Iowa.

Indorsed: Filed Oct. 5th, 1889. A. J. Vanduzee, cl'k, by J. H. Bolton, d'p'ty.

And on the said 5th day of October, 1889, there was filed in the office of the clerk of the said court in the said cause a stipulation in words and figures as follows, to wit:

Circuit Court of the United States, Northern District of Iowa, Western Division.

THERON CUMINS
vs.
THE DISTRICT TOWNSHIP OF DOON, Lyon County, Iowa. } Stipulation.

It is hereby stipulated and agreed that a jury be waived and said above-entitled cause tried by the court without intervention of a jury.

It is hereby also further stipulated and agreed that this
192–293 cause is to be submitted on written evidence and written arguments, and the same be submitted to the court within ninety days from this date.

Sioux City, Iowa, October 3rd, 1889.

DAVIS AND GANTT, *Att'ys for Pl'ff.*
VAN WAGENEN & McMILLAN AND KAUFFMAN & GUERNSEY,
Att'ys for the Def't.

Indorsed: Filed Oct. 5th, 1889. A. J. Vanduzee, cl'k, by J. H. Bolton, d'p'ty.

* * * * * * *

294–306 SHIRAS, *J.:*

This action is based upon certain interest coupons attached to a series of bonds for the sum of $20,000, issued by the defendant, a school district in the county of Lyon, in this State.

The defense is that bonds were issued without consideration, without authority of law, and in violation of section 3, article XI, of the constitution of Iowa, which provides that no municipal or political corporation within the State shall be allowed to become indebted in a sum exceeding five per cent. of the assessed valuation of the taxable property within the limits of the corporation, as shown by the last preceding State and county tax-lists.

By written stipulation a jury was waived and the cause submitted to the court upon the evidence taken in writing and after full and able argument by counsel upon the legal questions involved.

* * * * * * *

307 What judgment should be pronounced by the court upon the foregoing facts?

The production of the coupons forming part of the bonds issued by the defendant, they being due and unpaid, makes out a *prima facie* case for plaintiff.

308 The evidence shows that the bonds were issued by the defendant; that the plaintiff paid full value therefor, and there is nothing to connect the plaintiff with any alleged fraud in the issuance thereof, so that the defense of want of consideration is not sustained.

The main reliance of the defendant is upon the constitutional provisions limiting the indebtedness of municipal and political corporations to five per cent. upon the taxable valuation of the property within the corporate limits.

Under the rulings of the Supreme Court of the United States the corporation is not estopped by the recitals in the bond from showing that the issuance of the bonds in fact increased the corporate indebtedness beyond the indebtedness limit.

Dixon County *vs.* Field, 111 U. S., 83.
Lake County *vs.* Graham, 130 U. S., 674.

The question is whether the defendant had in fact made out the defense relied upon.

The bonds purchased by plaintiff were issued under the provisions of the act of the 18th General Assembly of the State of Iowa, passed for the purpose of enabling school districts to refund their outstanding bonded indebtedness. If the provisions of the act were followed the issuance of bonds under its terms would not increase the existing indebtedness of a district.

For illustration, if on the 11th day of July, 1881, there existed an enforcible bonded indebtedness against the district of Doon of $20,000 and the same had been refunded by the issuance of $20,000 of bonds of that date, could the latter be defeated by simply showing that the same exceeded in amount five per cent. of the taxable property in the district at that date?

309 The refunding of an existing enforcible debt cannot be said to be increasing the indebtedness, and a mere change in the evidence of the debt from one bond to another or from a judgment into a bond is not within the constitutional inhibition.

Austin *vs.* District Colony, 51 Iowa, 102.
R. R. Co. *vs.* Osceola County, 45 Iowa, 168.

Whilst the evidence shows great recklessness, lack of business management, and fraudulent practice which had doubtless greatly swollen the indebtedness of the district, it is not made to appear that a single dollar of the bonds outstanding against the district in July, 1881, could have been successfully contested in the hands of the holders thereof.

The evidence shows that the territorial extent of the district o Doon had been changed several times by the formation of other districts, and there is no evidence showing the amount of taxable prop

erty according to the tax-lists when the bonds outstanding on July 11th, 1881, were issued.

It is not shown, therefore, that any of the bonds in existence on July 11th, 1881, were void when issued by reason of the constitutional limitation.

Assuming that the plaintiff knew all that the evidence adduced in this case now discloses, it could not be said that he knew or should have known that the bonds which it was proposed to refund were not enforcible against the district.

True, if it had been proposed to issue bonds for the purchase of property then acquired or for the erection of school-houses or for any purpose other than refunding existing indebtedness, the plaintiff would have been bound to know that the amount of bonds proposed to be issued was in excess of five per cent. of the taxable valuation of the property at that date included within the limits of the
310 district, and that such issue of bonds must of necessity increase the indebtedness of the district beyond the constitutional limitation.

The proposition made to plaintiff, however, was in effect that contained in the resolution of July 9th, 1881. He was informed that the bonds offered him were issued under and in accordance with the provisions of the act of the 18th General Assembly for the purpose of refunding the bonds then outstanding against the district. The statute authorized the district to issue bonds for such refunding purposes. Having bought the bonds in good faith and paid full value therefor, under such circumstances they are certainly value in his hands, unless it is shown that they were invalid because the issuance thereof increased the indebtedness of the district beyond the constitutional amount. Under the issues made in the pleadings the burden of showing this fact is upon the defendant.

Austin *vs.* District of Colony, 51 Iowa, 102.

The plaintiff in purchasing said bonds had the right to assume that the directors and officials of the district were acting in good faith or, in the language of the supreme court of Iowa in R. R. Company *vs.* County of Osceola, 45 Iowa, 175: "There is a presumption that those charged with public trusts act honestly and in good faith. The whole theory of the law rests upon this presumption."

Recognizing the fact that the burden of showing the invalidity of the bonds was upon the defendant, the latter introduced a large amount of evidence touching the indebtedness of the district and the manner of its creation. Whilst, as already said, this evidence shows many frauds and much loose management in the conduct of the financial affairs of the district, it fails to show that any particular bond or series of bonds outstanding July 11th, 1881, was invalid in the hands of the other holder thereof, or that when issued it increased the indebtedness of the district beyond five per cent. of the taxable valuation of the property included within
311 the limits of the district as then constituted.

The evidence, therefore, on the one hand shows that on the 11th day of July, 1881, when the directors authorized the issuance

of the bonds, and on the days when plaintiff bought the bonds there was outstanding a bonded indebtedness exceeding $20,000 in amount, and on the other fails to show that any part of this could not be enforced against the district. Under these circumstances it cannot be claimed that it is proven that the issuance of bonds for the purpose of refunding this existing bonded indebtedness was a violation of the constitutional limitation. It is further urged that in fact part of the proceeds realized from the sale of the bonds was used for paying indebtedness of the district other than that evidenced by its bonds and coupons.

I do not think the plaintiff was charged with the duty of seeing to the proper application of the proceeds realized from the sale of the bonds.

The statute authorizes the sale of the bonds in open market. It would be an impossibility to thus sell the same if the validity of the bonds thus sold was made dependent upon the proper use of the moneys realized from the sale thereof.

It could not be expected that a purchaser could be found who could buy the bonds and part with his money if his right to recover on the bonds was to be determined by the use made thereof by the district after the money had passed into its possession and beyond the control of the purchaser.

The conclusion reached upon the facts developed in the evidence is that it is not made to appear that the bonds bought by plaintiff were void for want of consideration, nor that the same, being refunding bonds, were in violation of section 3, article XI, of the constitution of the State of Iowa, and it appearing that the
312 coupons declared on were and are parts of said bonds, and that the same are due and unpaid, the plaintiff is entitled to judgment thereof, with interest.

And afterward, to wit, on the 6th day of May, A. D. 1890, it being the first day of the May term, A. D. 1890, of the said court, the following proceedings were held in said cause, as appears of record on folio 444 *et seq.* of the minutes of said court.

Judgment Entry.

313 In the United States Circuit Court in and for Northern District of Iowa, Western Division. May Term, 1890.

THERON CUMINS, Plaintiff,
vs.
DISTRICT TOWNSHIP OF DOON, Lyon County, Iowa, Defendant. } Judgment Entry.

And now, at this time, to wit, May 6th, 1890, it being the first day of the May term of said court, a jury having been heretofore waived by written stipulation filed in this cause and the cause having been submitted to the court upon the evidence taken in writing and after arguments by counsel on legal questions involved, from the evidence submitted the court finds the following facts:

SHIRAS, *J.*:

From the evidence submitted I find the following facts:

1st. The defendant, The District Township of Doon, is a school district in Lyon county, Iowa, created under the provisions of the laws of the State of Iowa, having power to contract in its corporate name, to issue negotiable bonds, and to sue and be sued in its corporate name.

As originally constituted the district included six congressional townships of land. From time to time other districts have been set off therefrom until it included in June, 1881, only two congressional townships.

2nd. That the affairs of the district township from the date of its organization have been badly managed, and, through fraud & incompetency on part of the officers of the district, indebtedness to a very large extent has been created against the district, part of which was evidenced by bonds of the district, part by judgments against the district, and part by warrants or orders drawn on the different funds.

314 3d. That on or about the 14th day of June, 1881, the then officers of the district determined to undertake the refunding of the outstanding bonded indebtedness of the district, and to — end the board of directors of said district on the 9th day of July, 1881, adopted the following resolution by an unanimous vote:

JULY 9TH, '81.

Be it hereby resolved, That the resolution of the board passed June 14th, 1881, at a special session be hereby set aside and declared void and the following resolution be passed:

That, as there is a large bonded judgment debt upon the district of Doon, and as the records fail to show the total amount of said bonds outstanding and unpaid, and as we deem it for the best interest of the district that all of this debt should be under one form, and that the full amount may be known and the rate of interest lowered—

Be it resolved, That we issue bonds for the purpose of funding the outstanding bonded indebtedness of the district to an amount not exceeding twenty-five thousand dollars, and in the event of a less amount being needed, then only such an amount shall be issued as shall be required to take up all said debt, said bonds to be issued as authorized by chapter 132 of the Acts of the 18th General Assembly of the State of Iowa authorizing the funding of outstanding bonded indebtedness of school districts.

That said bonds shall bear seven per cent. interest, payable semi-annually, said interest payable at Rock Rapids, Iowa. Said bonds shall run for two years, payable after five years at the pleasure of the district.

That the treasurer shall keep a record of the bonds issued, in numbers and amounts, and the names of the parties to whom sold, with their post-office address.

315 That B. L. Richards, cashier, is hereby appointed refunding agent to negotiate said bonds.

That all indebtedness of the district before mentioned shall be taken up by said Richards only upon order from the treasurer of the district.

That all of the said indebtedness shall be paid by said Richards, and he shall render a statement, itemized, of said operation and surrender vouchers whenever demanded by the school board of this district.

On motion of Claflin above motion was unanimously adopted.

4th. That in pursuance of said resolution negotiable bonds, with interest coupons attached, were prepared and duly signed by the proper officers of the district, said bonds having printed thereon chapter 132 of the Acts of the 18th General Assembly of the State of Iowa. The following is a copy of the statute and of the bonds and coupons:

SEC. 1. Be it enacted by the General Assembly of the State of Iowa, That any independent school district or district township now or hereafter having a bonded indebtedness outstanding is hereby authorized to issue negotiable bonds at any rate of interest, not exceeding seven per cent. per annum, payable semi-annually, for the purpose of funding said indebtedness, said bonds to be issued upon a resolution of the board of directors of said district: Provided, that said resolution shall not be valid unless adopted by a two-thirds vote of said directors.

SEC. 2. The treasurer of such district is hereby authorized to sell the bonds provided for in this act at not less than their par value and apply the proceeds thereof to the payment of the outstanding bonded indebtedness of the district, or he may exchange such bonds for outstanding bonds, par for par, but the bonds hereby authorized shall be issued for no other purpose than the funding of
316 outstanding bonded indebtedness, the actual cost of the engraving and printing of such bonds to be paid for out of the contingent fund of such district.

SEC. 3. Said bonds shall not run more than ten years, and be payable at the leisure of the district after five years from the date of their issue: Provided, that in order to stop interest on them the treasurer shall give the owner of said bonds ninety days' written notice of the readiness of the district to pay and the amount it desires to pay, said notice to be directed to the post-office address of the owner of the bonds: Provided further, that the treasurer shall keep a record of the parties to whom he sells the bonds and their post-office address, and notice sent to the address as shownby said record shall be sufficient.

SEC. 4. Said bonds shall be in denominations of not less than one hundred dollars and not more than one thousand dollars. The said bonds shall be given in the name of the independent district or district township and signed by the president and countersigned by the secretary thereof, and the principal and interest may be made payable wherever the board of directors may by resolution determine.

SEC. 5. When said bonds are delivered to the treasurer to be ne-

gotiated the president shall take his receipt therefor, and the treasurer shall stand charged on his official bond with the amount of the bonds so delivered to him.

SEC 6. The tax of the payment of the principal and interest of said bonds shall be raised as provided in section 1823, chapter 9, title XII, of the Code: Provided, that if the district shall fail or neglect to levy said tax the board of supervisors of the county in which said district is located shall, upon application of the owner of said bonds, levy said tax.

SEC. 7. All acts and parts of acts in conflict with this act
317 are hereby repealed.

SEC. 8. This act, being deemed of immediate importance, shall take effect and be in force from and after its publication in the Iowa State Register and Iowa State Leader, newspapers published at Des Moines, Iowa.

Approved March 25, 1880.

$1,000. *Iowa School Bond.* No. 1.

The School District of Doon, Lyon county, Iowa, for value received, promises to pay to —— ——, at the Bank of Rock Rapids, Iowa, on the 11th day of July, 1891, or at any time before that date, after the expiration of five years from date of issue, after ninety days' notice, at the pleasure of said district, the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, said interest payable semi-annually, on the 11th days of January and July in each year, at the Bank of Rock Rapids, on the presentation and surrender of the interest coupons hereto attached. This bond is executed and issued by the board of directors of said school district in pursuance of and in accordance with chapter 132, Laws of the Eighteenth General Assembly of Iowa, and in conformity with a resolution of said board of directors passed in accordance with said chapter 132 at a meeting thereof held 9th day of July, 1881.

In testimony whereof the said school district, by its board of directors, have caused this bond to be signed by the president and attested by the secretary this 11th day of July, 1881.

J. SHATSWELL, *President.*

LON. H. WAGNEN, *Secretary.*

"EXHIBIT 7."

$35.00. The treasurer of the school district of Doon, Lyon Co.,
Iowa, will pay to the bearer hereof, January 11, 1886, at Bank
318 of Rock Rapids, thirty-five dollars for interest on bond No. 7, dated July 11, 1881, issued under provisions of chapter 132, Laws of the 18th Gen'l Assembly.

J. SHATSWELL, *President.*

L. H. WAGNER, *Secretary.*

5th. That B. L. Richards, named in the resolution of the directors of said — as the refunding agent to negotiate said bonds, sold on

or about July 25th, 1881, $10,000 of the bonds to plaintiff, who then resided at Lincoln, Illinois, and on or about August 11, 1881, sold a further amount of $10,000 to said plaintiff, who paid in cash the par value of said bonds, or in all the sum of $20,000 therefor.

In making the purchase of said bonds the plaintiff relied upon the representations made to him by the said Richards, that said bonds were a good investment; that they were issued in accordance with the provisions of the resolution of the board of directors of July 9th, 1881, and in pursuance of chapter 132 of the Acts of 18th General Assembly of the State of Iowa.

When plaintiff purchased the first block of $10,000 of bonds in July he knew it was the purpose of the def't to issue at least $20,000, and $25,000 if found necessary.

6th. That by section 3, article 11, of the constitution of Iowa, adopted in 1857, it is provided that "no county or other political or municipal corporation shall be allowed to become indebted in any manner or for any purpose to an amount in the aggregate exceeding five per centum of the value of the taxable property within such county or corporation, to be ascertained by the last State and county tax-lists previous to the incurring of such indebtedness."

7th. That the supreme court of Iowa, in Winspear *vs.* District Township of Colman, 37 Iowa, 542, has decided that a district township of the nature of the defendant corporation is a political corporation within the meaning of the constitution, and is therefore subject to the above limitation.

319

8th. That the total valuation of taxable property within the district township of Doon, as shown by the State and county tax-lists made out next previous to the issuance of the bonds in question, was the sum of $131,038. This is the valuation of the property included within the territorial limits of the district of Doon as the same were in 1881, at the date of the issuance of the bonds & coupons sued on.

The assessed valuation of the property within the district of Doon is not shown at any other date or period prior to 1880.

9th. That the evidence fails to show the exact amount of bonds issued by defendant outstanding on the 9th & 11th & 25th days of July, 1881, and on the 11th day of August, 1881.

It appears, however, that there was at least from $17,000 to $18,000 of bonds outstanding, upon which there was due on the 11th day of July, 1881, including interest, evidenced by coupons, over $20,000.

10th. It appears that in 1873 the defendant employed one James H. Wagner to build four school-houses in the district for the sum of $2,500 each. As built, the school-houses were not worth to exceed $1,500. The houses were accepted, however, and warrants issued therefor. These warrants were sued upon and judgments rendered thereon in 1873 against the district aggregating $10,000.

These judgments were bonded, as well as some other small ones rendered about the same time, the bonds therefor being issued in 1873.

It is probably true that, the judgments not having been all can-

celled upon the records, a further issue of negotiable bonds was made upon part of them in 1880, amounting to the sum of $9,000.

The evidence further shows that large amounts of warrants
320 were issued from time to time for various purposes, a portion of which at least was fraudulent.

11th. When the bonds of defendant were purchased by plaintiff in July and August, 1881, there were standing upon the record unsatisfied judgments against the defendant as follows:

Name.	Date of judg't.	Am't.	Costs.
S. S. Bradley	June 25, '73	$1,950	29 50
Chas. Schultz	" "	628 29	6 00
M. Wakefield	May 5, '75	180	3 50
National S. F. Co.	Nov. 9, '75	548 52	
Wm. Larrabee	Feb'y 18, '79	3,270 50	5 95
Wm. Larrabee	" "	1,304 20	5 95
R. M. Peile	Dec. 9, '79	623 80	3 75
C. E. Dickerman	Feb'y 18, '80	422 60	5 95
J. N. Perry	Feb'y 18, '80	1,472 78	5 75
J. F. Eggleston	" "	801 40	6 45
Heisey, Bean & Brown	May 19, '80	500	6 25

12th. The evidence shows that from the creation of the district township of Doon its financial affairs have been badly managed, and that many frauds have been perpetrated by its officers, and that thereby the amount of indebtedness evidenced by its bonds and by judgments against it has been fraudulently increased.

The evidence fails to show that as against the holders of the bonded indebtedness in July and August, 1881, a successful defense could have been interposed on behalf of the defendant.

The evidence fails to show whether at the date of the issuance of any of the bonds outstanding on July 11th, July 25th, and August 11, 1881, and issued prior to July 9th, 1881, the amount of the indebtedness of the district exceeded five per cent. of the taxable valuation of the property within the district, and it does not
321 therefore appear that any of the bonds outstanding when the bonds bought by plaintiff were issued were void because of the constitutional limitation contained in section 3, article XI, of the constitution of Iowa.

13th. The cash paid by plaintiff for the bonds sold to him in July and August, 1881, to wit, $20,000, was received by B. L. Richards, the financial agent named in the resolution of the board of July 9th, 1881, and also the further sum of $5,000, realized from a sale made December 20, 1881, of $5,000 of bonds to the Society for Savings of Cleveland, Ohio.

Richards, on the 6th day of March, 1882, made a report to the board of directors of defendant, which was accepted and approved, showing that he had paid out the sum of $19,174.00 in taking up bonds, coupons, judgments, warrants, and orders drawn on the teachers' contingent and school-house funds. The balance in his hands of $6,485.79 was paid to the treasurer of the defendant. The report so made is as follows:

School District of Doon in Account with B. L. Richards, Financial Agent.

1881.			
July 25.	By bonds Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, & 10, $1,000.00 each		$10,000 00
Aug. 11.	By bonds Nos. 11, 12, 13, 14, 15, 16, 17, 18, 19, & 20, $1,000.00 each		10,000 00
Dec. 20.	By bond No. 21		1,000 00
	By bonds Nos. 22, 23, 24, 25, 26, 27, 28, & 29, $500.00 each		4,000 00
	Interest from July 11 to Dec. 11		145 83
Sept. 22.	By error judgment order No. 74		513 96
	Dr. am'ts credits		$25,659 79
322			
July 26.	To blanks		$60 00
30.	" coupons No. 1 bonds, $5,200.00		208 00
	" bond No. 2		200 00
	Int. 3-5-29		69 90
	Coupons No. 1		50 00
	Int. 6-5-0, at 6%		19 25
	Coupon No. 3		50
	Int. 7-50, 6%		22 25
Aug. 3.	Bonds Nos. 1, 2, 3, & 4, at $100.00		400 00
	#4 #3 #2 #1		
	Int., $6.18, 6.19, 6.19, 6.19		24 75
	Coupons		40 00
	Call No. 4284. Int. Am't.		
Dec. 14.	Dickerman coupon & int., 12.20 380		392 20
16.	Bonds Nos. 17 & 16, $200 each, due 8, 1, '74		400 00
	Int. to 12, 16, '81		397 13
	Judgm't		91 82
	Costs		21 30
	Judgm't	73 13	
	Int.	16 97	
			90 10
	Am't up		2,536 70
M'ch 4.	Coupons No. 3, j'dgm't bond, $5,200		208 00
	Am't for'd		15,929 30
	Commission		500 00
	Am't of debits		$19,174 00
	Cr.		$25,659 79
	Dr.		19,174 00
	Balance		$6,485 79

		Int.	Am't of ord.	Total.
1881.				
July 30	To No. 44 contingent fund	1 80	$1 25	$126 56
" "	" 25 " "	07	2 50	2 57
323	" " 30 contingent fund	4	200 00	204 00
" "	" 36 " "		25 00	25 00
	59 teachers' "		56	56 00
	35 am't order			
May 18	50 $150 }			
June 11	50 100 }			50 00
	284 S. H., dated 3-16-74			2 50
	" int. 7-4-14 at 6%			1 10
	280 S. H., d't'd 3-16-74			50 00
	" int. 7-4-14 at 6%			22 94
	279 3-16-74			47 65
	" int. 7-4-14 at 6%			21 00
Aug. 2	162 t'ch'rs f'd	2 60	40	42 60
	4 contg. f'd	4 60	125	129 60
	48 " "	30	25	25 30
	45 " " $125, end. $50	1 10	75	76 10
	7 " "	50	14	14 50
	187 t'ch'rs	7 23	140	147 23
	147 " $160.00, end. $75	6 80	85	91 80
	156 S. H.	24 12	308	332 12
	118 " " $200.00, end. $100.00	14 25	100	114 25
	Int. on 154, $500, to July 30, '81			39 00
	" " 155, $500, to July 30, '81			39 00
Aug. 3	154 S. H.	1 25	500	501 25
	155 S. H.	1 25	500	501 25
20	66 contg.			7 00
	71 "			50 00
				2,720 32
	Am't over			$2,720 32
Aug. 20	73 contg. f'd			7 00
	190 " "			151 47
324	189 " "			200 00
	72 " "			50 00
Sept. —.	74 for judgm't			2,834 81
	67 contg. 8-1-13			5 00
Oct. 3	Bonds No. 20, $200; No. 21, $200; No. 22, $200; No. 23, $200; No. 24, $100; No. 25, $1,000			1,900 00
	Int. 1 month			15 83
	Coupons			940 00
	Int. on coupons			130 20
18	No. 75 contg.			78 00
	70 "			50 00
	77 "			25 00
	78 "			200 00
Nov. 8	No. 1183 contg. 8	22	4	4 22
	1184 " 10	5 45	100	105 45
	1185 " 11	5 45	100	105 45
	1306 " 12	55	10	10 55
	1186 " 13	2 59	47 50	50 09
	1278 " 22	1 65	33	34 65
	1386 contg. 29	40	8	8 40
	1335 " 33	33	10	10 33
	1381 " 23	68	20	20 68
	1382 " 24	68	20	20 68
	959 " 38	30	9 89	10 19
	1448 " 42	3 10	100	103 10

		Int.	Am't of ord.	Total.
1881.				
Nov. 8	No. 1449 contg. 49	67	855	$56 67
	1422 " 43	3 80	125	128 80
	1457 " 57	3 53	130	133 53
	1456 " 53	4 08	150	154 08
325	1453 " 56	3 53	130	133 53
	1454 " 58	3 53	130	133 53
	1452 " 55	3 53	130	133 53
	1451 " 54	3 53	130	133 53
	1450 " 52	83	30	30 83
	1180 t'ch'rs 3	1 80	30	31 80
	1181 " 4	1 80	30	31 80
	1182 " 5	1 80	30	31 80
	960 " 39	15	4 82	4 97
	1131 " 175	2 15	30	32 15
	1099 " 177	2 15	30	32 15
	961 S. H. No. 49	19	6 09	6 28
	1100 " "	13 90	200	213 90
	1093 " "	2 78	40	42 78
				11,257 08
	Am't up			11,257 08
Nov. 16	No. 2 sch. H.	14 55	75	89 55
	" 1299 time warrant	112 40	1,363 70	1,476 10
	958 " "	53 89	560	613 89
	957 " "	19 24	200	219 24
	956 " "	28 85	300	328 85
				200 00
1882.				
Jan'y 6	83 S. H. f'd	45	2 60	3 05
	2 contg.	4 73	25	29 78
	18 "	4 78	25	29 78
	19 "	4 68	25	29 68
	37 "			15 00
	154 "	11 88	30	41 88
	13 tch'rs f'd	14 70	35	49 70
326	247 S. H. "			7 00
13	170			875 00
	Coupons, $175.00 } " 700 }	3 62	21	24 62
Feb'y 9	5 S. H. f'd, $36.00, end. $15	5 17	30	35 17
	33 t'ch'rs' f'd			50 00
23	84 S. H. "			5 00
27	86 " "			17 30
	85 " "	66 52	424 31	490 83
M'ch 4	83 j'dgm't, $524.31, end. $100; 66.52, 424.31	9 80	31	40 80
	1 sch'l H. f'd, $36, end. $5			15,929 30

14th. That for four years after the issuance of said bonds bought by plaintiff the district paid the semi-annual interest coming due thereon, thus returning eight of the coupons attached to each bond.

That the defendant failed to pay the coupons coming due January 11th, 1886; July 11th, 1886; January 11th, 1887; July 11th, 1887 January 11th, 1888; July 11th, 1888; January 11th, 1889, and July 11th, 1889, upon each of said bonds, being the eight coupons on each

bond, or one hundred and sixty in all, each coupon calling for thirty-five dollars.

That said coupons are those declared on in this action, were due when this suit was brought, and that there is now due thereon, including interest at six per cent. up to the 5th day of May, 1890, the sum of six thousand four and sixty-two $\frac{40}{100}$ dollars ($6,462.40).

327 This case now being called for final judgment, it is ordered and adjudged by the court that the plaintiff, Theron Cumins, have and recover judgment against the defendant, The District Township of Doon, Lyon county, Iowa, in the sum of six thousand four hundred and sixty-two and $\frac{40}{100}$ dollars, with interest thereon, at the rate of six per cent. per annum, from May 5th, 1890; to which judgment and entry thereof the defendant, The District Township of Doon, at this time duly excepts. It is further ordered that the finding of facts made by the court in this cause be filed by the clerk and the same made a part of the record herein, and that the defendant, The District Township of Doon, have until the second day of the October term, 1890, of this court, to be holden in Sioux City, Iowa, to have settled, signed, and filed a bill of exceptions.

And afterward, to wit, on the 23rd day of August, A. D. 1890, there was filed in the office of the clerk of said court a writ of error in the words and figures following, to wit:

Writ of Error.

328 And afterwards, to wit, Aug. 23d, 1890, there was filed in this cause a writ of error; which writ is in words & figures as follows, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the circuit court of the United States for the northern district of Iowa, western division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Theron Cummins, plaintiff, against the District Township of Doon, in Lyon county, in the State of Iowa, defendant, a manifest error hath happened, to the great damage of the said defendant, The District Township of Doon, in Lyon county, in the State of Iowa, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme

Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 14th day of August, A. D. 1890.

(Signed) A. J. VAN DUZEE, *Clerk*,
By J. H. BOLTON,
D'p'ty Clerk U. S. C. C., Northern Dist. of Iowa.

Allowed and bond on appeal fixed at $500.

Aug. 23, 1890.

O. P. SHIRAS, *Judge.*

329 And afterwards, to wit, on the 23rd day of August, A. D. 1890, there was filed in the office of the clerk of said court an appeal bond in the words and figures following, to wit:

Appeal Bond.

330 Know all men by these presents that the District Township of Doon, in Lyon county, in the State of Iowa, as principal, and Chas. Cuylow, Geo. Holmes, C. H. Becker, and Geo. W. Bowers, surety, are held and firmly bound unto Theron Cummins in the sum of five hundred ($500.00) dollars, to be paid to the said Theron Cummins, his executors, administrators, or assigns; for the payment of which, well and truly to be made, we bind ourselves, our heirs or administrators, jointly and severally, by these presents.

Signed with our hands and dated this 8th day of August, A. D. 1890.

Whereas, at a term of the circuit court of the United States for the eighth circuit in and for the northern district of Iowa, western division, in a suit pending in the said court between Theron Cummins, plaintiff, and the District Township of Doon, in Lyon county, in the State of Iowa, defendant, judgment was rendered against the said defendant, and the said defendant, The District Township of Doon, in Lyon county, in the State of Iowa, having upon a writ of error appealed to the Supreme Court of the United States to reverse the judgment in the aforesaid suit, and a citation having issued, directed to the said Theron Cummins, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said District Township of Doon, in Lyon county and State of Iowa, shall prosecute its said appeal and writ of error to effect and answer all costs if it shall fail to make good its said appeal, then this obliga-

tion to be void; otherwise to be and remain in full force and virtue.

331 (Signed) THE DISTRICT TOWNSHIP OF DOON,
By its attorneys, A. VAN WAGENEN.
CHAS CUYLOW.
G. W. HOLMES.
C. H. BECKER.
GEO. W. BOWERS.

THE DISTRICT TOWNSHIP OF DOON, IN LYON COUNTY, IN THE STATE OF IOWA,
By A. VAN WAGENEN,
B. F. KAUFFMAN, AND
N. T. GUERNSEY,
Its Attorneys.

The foregoing bond is hereby approved on this 23d day of August, A. D. 1890.

(Signed) O. P. SHIRAS, *Judge.*

And afterward, to wit, on the 23rd day of August, A. D. 1890, there was filed in the office of the clerk of said court a citation and an acceptance of service upon the same in words and figures as follows, to wit:

Citation.

332–334 UNITED STATES OF AMERICA, *ss:*

To Theron Cummins, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October, A. D. 1890, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eighth circuit and for the northern district of Iowa, western division, wherein The District Township of Doon, in Lyon county, in the State of Iowa, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. O. P. Shiras, judge of the circuit court of the United States for the eighth circuit and for the northern district of Iowa, on this 23d day of August, A. D. 1890.

(Signed) O. P. SHIRAS, *Judge.*

Due and legal service of the foregoing citation is hereby accepted on this 23d day of August, A. D. 1890.

(Signed) DAVIS & GANTT,
Attorneys for Theron Cummins, Above Named.

335 In the United States Circuit Court in and for the Northern District of Iowa, Western Division.

THERON CUMINS
vs.
THE DISTRICT TOWNSHIP OF DOON, in Lyon county, Iowa.

On Writ of Error to the Supreme Court of the U. S.

Assignment of Errors.

Now comes the defendant in the above-entitled cause, The District Township of Doon, in the county of Lyon, in the State of —, and assigns the following errors as appearing in the record in the above-entitled cause:

1. The court erred in rendering judgment against the defendant above named and in favor of Theron Cumins for the amount of the coupons in suit, upon the facts as found by the court and entered of record.

2. Upon the facts thus found and made a matter of record the judgment of the court should have been in favor of The District Township of Doon, the plaintiff in error, and in failing to render judgment in favor of the said plaintiff in error the court erred.

3. The court erred in holding that the bonds from which the coupons in suit were *attached* were valid obligations against The District Township of Doon, the plaintiff in error.

4. The court erred in refusing to hold that the bonds from which the said coupons were taken were issued in excess of the constitutional limitation of the State of Iowa, and therefore void.

5. The court erred in holding that it is incumbent upon The District Township of Doon, the plaintiff in error, to show the invalidity of other bonds which may have been theretofore issued by
336 the district, but which were not shown to have been paid out of the proceeds of the bonds in controversy in this suit.

6. The court erred in holding that the validity of the bonds from which the coupons in this suit were taken was dependent in anywise upon the purpose for which the bonds were ostensibly issued and irrespective of the purpose for which the proceeds thereof *was* used.

And because of these errors, apparent of record in the said cause, the District Township of Doon, in the county of Lyon, in the State of Iowa, now prays for a reversal of the judgment of the said circuit court of the northern district of Iowa, western division, and that the judgment entered therein be set aside and held for naught.

VAN WAGENEN & McMILLAN,
KAUFFMAN & GUERNSEY,
Attorneys for Defendant.

[Endorsed:] Filed Oct. 3rd, 1890. A. J. Van Duzee, cl'k, by J. H. Bolton, d'p'ty.

Endorsed on cover: N. Iowa C. C. U. S. No. 1430. The District Township of Doon, in Lyon county, State of Iowa, plaintiff in error, *vs.* Theron Cummins. Filed October 17, 1890.

Office Supreme Court U. S.
FILED,
JAN 6 1891
JAMES H. McKENNEY

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 1430.

THE DISTRICT TOWNSHIP OF DOON, IN LYON COUNTY, STATE OF IOWA, PLAINTIFF IN ERROR,

vs.

THERON CUMMINS.

In Error to the Circuit Court of the United States for the Northern District of Iowa.

BRIEF AND ARGUMENT IN BEHALF OF PLAINTIFF IN ERROR.

P. C. Kenyon, Law Brief Publisher, 506 and 508 Locust St., Des Moines, Iowa.

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 1430.

THE DISTRICT TOWNSHIP OF DOON, IN LYON COUNTY, STATE OF IOWA, PLAINTIFF IN ERROR,

vs.

THERON CUMMINS.

In Error to the Circuit Court of the United States for the Northern District of Iowa.

BRIEF AND ARGUMENT IN BEHALF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The defendant in error brought his suit at law in the court below, claiming of the plaintiff in error, the district township of Doon, in the county of Lyon, Iowa, a judgment upon certain coupons referred to in the petition. The petition averred the corporate character of the defendant, and alleged that under the provisions of chapter 132, laws of the Eighteenth General Assembly of Iowa, the school district issued its bonds for $1,000 each, payable to Theron Cummins, the plaintiff, and that attached thereto were interest coupons representing the several installments of interest. The plaintiff alleged that he was the holder of twenty of these bonds. The petition contained a count for each of the coupons in suit, numbering 160 in all, and amounting, in

the aggregate, to $5,600. The petition concluded with the usual prayer for judgment for that amount with interest. The suit was brought upon eight coupons from each of the bonds owned by plaintiff. The answer of the district plead as a defense the constitutional limitation imposed by the constitution of the state of Iowa, limiting the amount of indebtedness such corporation could create, and also fraud and failure of consideration. A trial by jury was waived and the court made a finding of facts which, by order of the court, was made a matter of record, and embraced in and made a part of the judgment of the court below, upon which findings judgment was entered for the bondholder, against the district, for the full amount of the coupons, with interest, from which judgment the defendant sued out a writ of error to this court.

The court below, while finding that frauds were shown in the financial affairs of the district, found that the bondholder was not chargeable therewith. A further reference to the findings of the court below will be made in the course of this argument.

BRIEF AND ARGUMENT.

I.

The bonds were issued in violation of the constitution of the state limiting the indebtedness that municipal corporations might issue.

Section 3, of article XI, of the constitution of the state of Iowa, provides as follows:

> SEC. 3. No county, or other political or municipal corporation shall be allowed to become indebted in any manner, or for any purpose, to an amount in the aggregate, exceeding five per centum on the value of the taxable property within such county or corporation—to be ascertained by the last state and county tax lists, previous to the incurring of such indebtedness.

It is found and admitted that this section is applicable to the plaintiff in error. The bonds from which the coupons in suit were cut were issued on the 11th of July, 1881. The total assessed value of the taxable property of the school district, as shown by the state and county lists next previous to the issuance of the bonds in question, was the sum of $131,038. (See finding 8, record, p. 12.) Under the provisions, therefore, of the constitution, the school district could not become indebted, or issue evidences of indebtedness for an amount in excess of five per cent of this sum, to-wit, $6,551.90, and it was already in debt, as found by the court below, in several times that sum. The issue of bonds of which those from which the coupons in suit were detached amounted to $25,000, $20,000 of which were taken by plaintiff. The plaintiff took the bonds in two lots, of $10,000 each, but he knew when he took the first $10,000 that it was the purpose of the defendant to issue at least $20,000, and $25,000 if found necessary, and he bought with this knowledge. (See finding 5, top of page 12, of record.) We submit, therefore, that under the decisions of this court, as applied to the questions here presented, the issue of the boads from which the coupons in suit were taken was absolutely void, and it is clear that no recitals in the bonds as against this constitutional limitation can avail, although there are, in fact, no recitals in the bonds which could possibly reach the fatal defect here existing. We beg to call the attention of the court to the cases of

Dixon County vs. Field, 111 U. S., 95.
The School Dist. vs. Stone, 106 U. S., 183.
Lake County vs. Graham, 130 U. S., 683.

The supreme court of the state of Iowa has also always been most careful to enforce to the letter this limitation imposed by the constitution, and has held that securities issued in violation of it were void. See

McPherson vs. Foster Bros., 43 Iowa, 48.
Mosher vs. Ind. School Dist., 44 Iowa, 122.
King vs. Mahaska Co., 75 Iowa, 329.
Scott vs. City of Davenport, 34 Iowa, 208.
Council Bluffs vs. Stewart, 51 Iowa, 385.

These propositions were conceded by the court below; but that court found that there were, prior to the issuance of this series of $25,000 of bonds, other bonds outstanding, amounting to about $18,000. The bonds in controversy here were issued by the district for the ostensible purpose, as shown by its resolution, of refunding the outstanding bonded indebtedness of the district, under chapter 132 of the acts of the Eighteenth General Assembly. (See finding 3, record, p. 9). The material part of this chapter we, for the convenience of the court, here reproduce *verbatim:*

SECTION 1. That any independent school district or district township now or hereafter having a bonded indebtedness outstanding is hereby authorized to issue negotiable bonds at any rate of interest not exceeding seven per cent per annum, payable semi-annually, for the purpose of funding said indebtedness; said bonds to be issued upon a resolution of the board of directors of said district: Provided, That said resolution shall not be valid unless adopted by a two-thirds vote of said directors.

SEC. 2. The treasurer of such district is hereby authorized to sell the bonds provided for in this act, at not less than their par value, and apply the proceeds thereof to the payment of the outstanding bonded indebtedness of the district, or he may exchange such bonds for outstanding bonds, par for par; but the bonds hereby authorized shall be issued for no other purpose than the funding of outstanding bonded indebtedness. The actual cost of the engraving and printing of such bonds to be paid for out of the contingent fund of such district.

This legislation is, of course, subordinate to the constitution, and necessarily must be, and the provisions of this act must be operative, if at all, within the limit imposed by the constitutional provision which we have quoted. The legislature itself could not, if it would, provide any means by which this consti-

tutional limitation could be overborne or evaded, nor has it sought to do so. Upon this subject this court, held in the case of *Lake County vs. Rollins*, 130 U. S., 662, the following doctrine. We quote from page 674 of the opinion:

> Neither can we assent to the position of the court below that there is, as to this case, a difference between indebtedness incurred by contracts of the county and that form of debt denominated "compulsory obligations." The compulsion was imposed by the legislature of the state, even if it can be said that the compulsion was to incur debt, and the legislature could no more impose it than the county could voluntarily assume it, as against the disability of a constitutional prohibition. Nor does the fact that the constitution provided for certain county officers, and authorized the legislature to fix their compensation and that of other officials, affect the question. There is no necessary inability to give both of the provisions their exact and literal fulfillment.

In the case of *Lake County vs. Graham*, reported at page 674 of the same volume of reports, this court held the following, which is exactly applicable to the limitation imposed by the constitution of the state of Iowa: We quote from pages 683–4:

> In this case the standard of validity is created by the constitution. In that standard two factors are to be considered; one the amount of assessed value, and the other the ratio between that assessed value and the debt proposed. These being exactions of the constitution itself, it is not within the power of a legislature to dispense with them, either directly or indirectly, by the creation of a ministerial commission whose finding shall be taken in lieu of the facts.
>
> In the case of *Sherman County vs. Simons*, 109 U. S. 735, and others like it, the question was one of estoppel as against an action imposed by the legislature, being the source of exaction, had created a board authorized to determine whether its exaction had been complied with, and that its finding was conclusive to a *bona fide* purchaser.

We turn now to inquire what was done by the school district under the resolution adopted by the board and under this legislation to which we have just referred. As already stated, the district in fact issued $25,000 of bonds under this resolution. The proceeds of these bonds instead of being used for the purpose of refunding the bonded debt of the district, was used

almost wholly for other purposes, and mainly for the purpose of paying outstanding warrants on the contingent fund, school house fund, teachers' fund and other warrants and orders, many of which were fraudulent. Finding 13 of the agreed record, p. 13, together with the report of B. L. Richards, made a part of that finding, shows what was done with this money. The total amount of the proceeds of this $25,000 issue used for taking up outstanding bonds, as shown by the report embraced in this finding, is as follows:

July 30, Bond No. 2	$ 200.00
August 3, Bonds from 1 to 4 inclusive, $100 each, total	400.00
September 16, Bonds 16 and 17, $200 each, total	400.00
October 3, Bonds numbered 20 to 25 inclusive, total	1,900.00
Here is a total of	$2,900.00

which represents the total amount of the bonded debt, which was taken up by the proceeds of this issue of $25,000 of bonds. The report shows the character of the other claims paid out of this fund, and they are almost wholly contingent fund orders or warrants, teachers' fund warrants, school house orders and such items, many of which were fraudulent. Upon these facts, the exact position taken by the court below was this, that under chapter 132, laws of the Eighteenth General Assembly of Iowa, above quoted, there existed the right on the part of the district to refund the *bonded* debt. This bonded debt the court finds to be about $18,000, and the accumulations of interest thereon approaching $20,000 in amount (see second paragraph of the ninth finding, record, p. 12); that to refund this bonded debt, assuming it to be valid, would not be a violation of the constitutional provision; that there was no testimony to show its invalidity, and, therefore, the court would assume it to be valid; that the fact that the proceeds of the last issue of bonds were not, in fact, devoted to the redemption of the other bonds, was immaterial, because the

court held that the purchaser was not bound to follow the proceeds of his bond; that he might legally rely upon the duty of the officers of the district to use the bonds to take up the outstanding bonds, and though they did not do so, such failure so to do would not affect the validity of his bonds, and, therefore, the court held that the use made of the proceeds of the bonds, as to the purchaser was wholly immaterial, and though the proceeds were used to take up warrants which were fraudulent the purchaser would not be chargeable with such fraud.

To show that we have thus correctly stated the position of the court below, and upon which position the judgment against the district was based, we beg to refer to the opinion of the court, and especially that portion beginning at the bottom of page 6, of the record, and covering pages 7 and 8; and herein, we respectfully submit, inheres the errors of the court below.

They may be stated succinctly, as follows:

1. There being no issue in the pleadings as to the validity of any preëxisting indebtedness, it was error to assume that such a question could be or was triable, or the subject matter of investigation in this suit at law.

2. In assuming that the defendant must show in this case, under the issues as framed, that the bonds against the district outstanding, prior to the issue in controversy here, were not the valid obligations of the district, before it could make a successful defense to the bonds in controversy.

3. The holding, that if the bonds were issued for the ostensible purpose of refunding outstanding bonded indebtedness, the purchaser need not look further than the statute, and was not bound to ascertain whether the proceeds of the bonds issued to him were so used or not, we submit was erroneous.

4. In holding upon the facts which confessedly show an over issue of nearly $20,000; that such issue is valid notwithstanding the constitutional limitation.

These questions are the ones covered by the assignment of errors, record, page 20.

II.

We notice these questions in the order stated, though perhaps not in the order of their relative importance.

This being a suit at law upon coupons detached from the twenty bonds taken by defendant in error, the petition declares on these coupons as valid obligations of the school district, and prays for judgment.

Here is involved, as we submit, only the question of the legal validity of the bonds from which these coupons were detached. Nothing more. In holding that the validity of other bonds, issued years before, was by these pleadings drawn in question, we respectfully submit the court below erred.

It cannot be conceived how such an inquiry could be entered upon in this suit. These old bonds might be invalid for many reasons, but how could the many questions which might arise in respect to all the various items of outstanding liability be tried and determined in this suit? Argument would seem to be unnecessary upon such a proposition. If the issue of bonds in controversy here was excessive and in violation of the constitution, it is void, and the only issue which can be tried in this suit is just that, and it must result in the failure of plaintiff to recover, and we submit that the judgment of the court below should have been given for defendant accordingly under the repeated rulings of this court in the cases we have already cited, and many others.

If we had here a case where the proceeds of the bonds in controversy were in fact used to take up and pay the outstanding bonds, for the refunding of which they were issued, a different question would arise. But in such an event it could be confidently claimed that in a suit at law there could be no recovery, for the issue being in violation of the constitution, it

must fail at law, even though it be conceded that in a proper proceeding the validity of prior issues which it may have been the purpose to refund could be ascertained and determined. To do this, however, without an issue respecting these various obligations, would be a legal anomaly.

III.

The court below, however, substantially held that not only was the question of the validity of the prior bonded indebtedness involved, but that the burden of proof was upon the *defendant* to show affirmatively that such bonded indebtedness was not a valid enforceable debt against the school district before it could make a successful defense to the bonds in suit, notwithstanding they were issued in excess of the constitutional limitation. We respectfully submit that this was error.

Plaintiff relied for his right to a judgment upon the *legal validity* of these bonds.

That they were and are invalid, we submit is determinable solely by reference to the provision of the constitution we have heretofore quoted, and the last preceding state and county tax lists, and this showing being made, and being in favor of the defendant, the bonds are certainly *prima facie* void. If they are for any reason removed, or excepted, from the effect of this constitutional provision, or if in an action at law they could be so removed or excepted from its provisions, which we deny, it certainly is for the plaintiff by both *pleading* and *proof* to show the facts which bring the bonds within such exception.

IV.

But the court below proceeded one step further and held as follows, (we quote literally from the opinion, record p. 8):

> It is further urged that in fact part of the proceeds realized from the sale of the bonds was used for paying indebtedness of the district other than that evidenced by its bonds and coupons.

I do not think the plaintiff was charged with the duty of seeing to the proper application of the proceeds realized from the sale of the bonds.

The statute authorizes the sale of the bonds in open market. It would be an impossibility to thus sell the same if the validity of the bonds thus sold was made dependent upon the proper use of the moneys realized from the sale thereof.

It could not be expected that a purchaser could be found who could buy the bonds and part with his money if his right to recover on the bonds was to be determined by the use made thereof by the district after the money had passed into its possession and beyond the control of the purchaser.

We now recall attention to certain other facts to be considered in this connection. We have already called attention to the 13th finding and the report accompanying it (See record, 13–16 inclusive), to show that the court finds that only a small portion of the proceeds of this $25,000 issue of bonds $2,900 was in fact used to take up the other outstanding bonds. We further recall attention to a fact already adverted to, that the law under which this $25,000 worth of bonds were issued authorized the issuing of bonds only for the purpose of refunding other bonds. By this thirteenth finding of the court it appears, as we have already stated, that only $2,900 of this $25,000 was issued to take up other bonds. The remainder was used for various purposes, including, the taking up of warrants and orders of different kinds, many of which were fraudulent (see 10th finding, record, pp. 12 and 13), but whether fraudulent or not could not be bonded under existing laws. The court, however, upon this finding holds, as we have just shown, that inasmuch as the act of the legislature authorized the issuing of bonds to refund other bonds, and inasmuch as there were other bonds then outstanding, although of a less amount than the total issue of new bonds, these facts in themselves not only justify the issuing of new bonds to the amount of $25,000, but that the purchaser had the right to close his eyes absolutely as to the use actually made of the proceeds of the bonds, and herein, we

submit, inheres a radical error, and in respect of which we observe

1. That the position of the court below overlooks the fact that this issue of $25,000 of bonds, of which the plaintiff, Cummins, took $20,000, was four times the amount that, under the constitution, could have been issued. There was, therefore, the taint and vice of unconstitutionality upon the face of the transaction. Under the rulings of this court, as well as the supreme court of Iowa, the taker of these bonds was charged with knowledge of these facts, and of this constitutional infirmity which was fatal to the validity of the issue of bonds.

2. The position and holding of the court overlooks, as we respectfully submit, the further fact that, even for the moment conceding that the outstanding issue of bonds the bonds to refund which the new bonds were issued were valid, and conceding further, for the sake of the argument, that new bonds might be issued in excess of the constitutional limit to refund valid outstanding bonds, which we, in fact, deny can be done, nevertheless the proposition that a new issue may be put forth to pay a valid preëxisting issue, is necessarily based, and must be based under the constitution, upon the assumption that the old bonds are in fact paid, and the indebtedness thereby represented extinguished by the transaction which justifies the issue of the new. The old bonds are not refunded by issuing new ones and using the proceeds for other purposes. This is not a *refunding* of the old bonds at all, and that is just the case we have at bar.

What is the result of the doctrine of the court below? Let us take an illustrative case. Suppose that a municipal corporation in the state of Iowa has an outstanding valid bonded indebtedness of $10,000, and that under the constitution it may lawfully incur just that amount of debt and no more, but the municipal corporation concludes to refund that debt, and puts forth a new issue for that ostensible purpose. It receives the

money for them and appropriates it for other uses, or misappro
priates it. What is the amount of the outstanding valid indeb
edness? It will not be claimed for a moment that the old ou
standing $10,000 worth of bonds are paid, for we have assume
that they are not paid, and the use for other purposes or misus
of the proceeds of the new issue certainly does not pay the ol
debt. But under the ruling of the court below the new issu
is also valid, so that we have, notwithstanding the constitutiona
limitation, $20,000 of valid debt instead of the permitte
amount of $10,000; and if this reasoning is correct, there is n
reason why a second, third or fourth issue of bonds of lik
amount may not be put forth, each one based upon the avowe
purpose of refunding the same identical $10,000 of outstandin
valid bonded debt. The result is that the constitutional limita
tion is a mere plaything, a toy in the hands of the officers of th
district, and of the purchasers of the bonds, and this, we submi
is the radical error inhering in the ruling of the court below.

We also submit that the ruling is wholly unsustained by an
authority to be found anywhere. It is in fact, as we submit,
wholly novel doctrine in respect to bond litigation. The cour
below referred to two cases to sustain this doctrine and we now
beg to call attention to them. The first is that of *Austin ex
The District Township of Colony*, 51 Iowa, 102. This sui
was an action to recover upon a school order, with a denial o
the validity of the order. The order upon its face purported
to be given for money furnished the district in the erection of
school house. The supreme court held, first, that the district
township had the right to proceed and erect the school house
second, that it had the right to borrow money therefor, and tha
therefore the order was issued in the exercise of a right con
ferred upon the district and for a lawful purpose. The money
however, was in fact used to pay a previously existing debt
and the court held that this fact would not render invalid the
order. The district had voted to erect a school house to cost

not more than $2,000, and it was held that the burden of proof was upon the defendant to show that this limit fixed by the electors was exceeded, and certainly no fault can be taken with this position. This is the whole of the case. It will be observed that the question of the constitutional limitation is not involved in the case and, as we submit, there is absolutely nothing in the case supportive of the doctrine of the court below in the case at bar. The supreme court simply held, as we have just said, first, that the school district had the right to borrow the money and issue its order to repay the same; secondly, that whether the money borrowed was in excess of the limit fixed by the electors or not, was one which must be proven by the defendant, doctrine of which we do not complain. In the case at bar it is expressly found that the constitutional limit was exceeded by the issue of the bonds in controversy here.

The district township in the case cited was not acting beyond the limits of the constitution at all, but wholly within those limits. It was acting, so far as the proof shows, wholly within the limit of the amount fixed by the voters for the construction of the school house in question. This was all that was necessary to enable the plaintiff to recover upon the order. We fail to find anything whatever in the case supportive of the doctrine of the court below. On the contrary the authorities we have cited amply show that the supreme court of Iowa have been entirely consistent in enforcing the constitutional restrictions imposed upon municipal corporations in the state of Iowa to the letter.

The next case is that of *The Railroad Company vs. Osceola County*, 45 Iowa, 168. In that case a judgment had been entered against Osceola county. An execution had been issued against the county upon that judgmeut. At that time there was in force in the state of Iowa the following provision, which was in force only for a few months, when it was promptly repealed by the legislature, to-wit:

In case no property of a municipal corporation, against which an execution has issued, is found upon which to levy, or if the judgment creditor elect not to issue execution against such corporation, he is entitled to demand and receive of such debtor corporation the amount of his judgment and costs, either in the ordinary evidences of indebtedness issued by such corporation, or in bonds of such corporation of such character as the parties may agree upon.

Pursuant to this provision the bonds in question were issued. They had been by the person to whom they had been issued, transferred and negotiated to other persons for value without notice of any defect or fraud or collusion in obtaining the judgment. The plaintiff in that case brought suit to restrain the county of Osceola from collecting taxes that were subsequently levied to pay these bonds so issued, upon the ground that the indebtedness upon which the judgment was obtained was invalid, because in excess of the constitutional limitation, and that the county officers fraudulently and collusively failed to set up such defense. The supreme court of the state of Iowa, state in the following language the question thus presented to them for determination:

The question now submitted for our determination is the following: Can the validity of negotiable bonds of a county, issued in satisfaction of a judgment, in the hands of innocent holders for value, without notice of any claim that they are illegal for any cause, be questioned by showing that the judgments were rendered upon warrants issued in excess of the constitutional limitation of five per cent, and that the board of supervisors, fraudulently omitted to interpose the defense when the warrants were sued upon? This question differs from all those which have hitherto determined, involving the effect of section 3, article II, of the state constitution.

This question the supreme court answered in the following words:

Upon mature consideration we are of opinion that bonds so issued cannot be assailed in the hands of innocent holders for value.

We invite the attention of the court to a careful perusal of this opinion and beg to say that in our judgment, absolutely nothing can be found in it that in the slightest degree sup-

ports the doctrine of the court below in the case at bar. The court below quoted the following language from the opinion of the supreme court in this case, to-wit: "There is a pre-"sumption that those charged with public trusts act honestly "and in good faith. The whole theory of the law rests upon "this presumption."

This quotation, torn from the subject under discussion, in connection with which it was used by the court itself, could just as readily be used to overturn the decision of the supreme court of Iowa in the case of *McPherson vs. Foster Bros.*, cited in the first division of this argument, as to sustain the position of the court below in respect to the right of a purchaser of refunding bonds, which issue was in itself in violation of the constitution, to rely upon the proceeds of the bonds being properly used by the officers of the district, to take up a previously outstanding valid issue to refund which it may have been issued. The court in making use of this language, are discussing one ground of relief set up by the railroad company in its petition, to-wit: That the company and the officers of the company fraudulently and collusively, and in collusion with the plaintiff, refused to make the defense of the constitutional limitation in the suit which resulted in judgment. The supreme court of Iowa held that there must come a time when questions of this character are settled by the force and effect of the judgment itself. That the judgment being conclusive evidence of the validity of the debt, the fraud of the officers could not be set up as against an innocent holder of the bond which was issued upon the judgment under this provision of the statute, and by which issue the judgment was in fact paid and canceled.

We have no disposition to quarrel with this doctrine, but how can it be used to sustain the doctrine that a district or municipality in Iowa, under the constitutional limitation hereinbefore set forth, may avail itself of a legislative permission to refund outstanding bonds for the purpose of evading and over-

riding the constitution by the pretense that the successive issues purport to be for the purpose of refunding, but the proceeds of which are never, in fact, used for that purpose. If this is correct doctrine the constitutional limitation in the state of Iowa, designed for the protection of the tax payers of the county and of the municipality, designed as an absolute veto upon the limit of valid indebtedness that can be created, and, therefore, designed as a limit upon the exercise of the power of taxation, by which their farms are burdened, and their property virtually mortgaged, is rendered absolutely nugatory, and it might as well be erased from the constitution. If this proposition is the key to a violation of the constitution, it is one which has not yet been announced by any court of last resort, but which, if held to be the law, will furnish a widely open door to municipal officers by means of which the constitution will be most successfully violated and trodden under foot.

The language of the constitution is plain, and its meaning is obvious. It, in fact, imposes no hardship upon the taker of the bonds. If the proceeds of the bonds are to be used to take up other bonds, and both issues would aggregate an amount in excess of the constitutional limit, the purchaser knows his bonds are not good unless the other bonds are, in fact, paid, and it is no more of a burden for him to see that this is done than for one who loans money on real estate, the proceeds of which are to be used to pay a prior mortgage, to see that the proceeds are so used in order that his own mortgage may become the first lien upon the property.

But if the process of refunding, which is in no case a necessity, should be rendered more difficult, this circumstance would not affect the duty of the courts in the premises.

In the case of *The R. R. Co. vs. Taylor Co.*, 52 Wis., 37, the the court uses the following language, which is quoted approvingly by this court in the case of *Lake County vs. Rollins*, 130 U. S., 662–672:

It is no part of the duty of the court to make or unmake, but simply to construe this provision of the constitution. All questions of policy, all questions of restrictions and unjust discrimination, all questions of flexibility and adjustability to meet the various wants and necessities of the people must be regarded as having been fully considered and conclusively determined by the adoption of the constitution. The oath of all is to support it as it is; and not as it might have been. To do so may in some cases lead to individual hardships, but to do otherwise would be most portentous of evil.

V.

Finally, we submit that in a suit at law the issue must necessarily be, are the bonds sued on valid, or are they the legal obligations of the district, or municipality. If they are not, recovery cannot be had thereon. The coupons in suit are detached from bonds that were issued as found by the court below, and, as confessed, in violation of these prohibitive provisions of the constitution. The plaintiff knew, and was bound to know this when he took the bonds. There is no other issue in the case. These facts render the obligations invalid. At law these bonds are void. They are void, irrespective of the use made of the proceeds. The fact of the illegality prevents a recovery at law thereon. The plaintiff does not invoke the alleged validity of any obligations which may have been paid by the proceeds of the bonds in controversy in aid of his suit, nor could he do so in this proceeding. He simply declares upon these obligations. Upon them he bases his right. Being invalid, he cannot recover thereon.

We respectfully ask this honorable court to reverse the judgment of the court below.

B. F. KAUFFMAN,

Of Counsel for Plaintiff in Error.

A. Van Wagenen &
D. T. McMillan of
Counsel for Plff in
Error.

Office Supreme Court U. S.
FILED,
JAN 5 1891

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1890.

No. 1430.

THE DISTRICT TOWNSHIP OF DOON, IN LYON COUNTY, STATE OF IOWA, PLAINTIFF IN ERROR,

vs.

THERON CUMMINS.

In Error to the Circuit Court of the United States for the Northern District of Iowa.

BRIEF AND ARGUMENT IN BEHALF OF DEFENDANT IN ERROR.

GOLDIE BROS. SIOUX CITY.

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STATEMENT OF THE CASE.

We think it necessary, in order to give the court an intelligent understanding of the case, to make a fuller statement of it than appears in plaintiff's brief.

The action was brought in the court below to recover upon certain coupons for past due interest on negotiable bonds issued by the district township of Doon, Lyon county, Iowa, July 11, 1881.

On the 9th day of July, A. D. 1881, the board of

directors of the district township of Doon, adopted the following resolution, to wit:

July 9th, 1881. Be it hereby resolved, That the resolution of the board passed June 14th, 1881, (means May 14th, 1881) at a special session be hereby set aside and declared void and the following resolution be passed:

Resolved, That, as there is a large bonded judgment debt upon the district of Doon, and as the records fail to show the total amount of said bonds outstanding and unpaid, and as we deem it for the best interest of the district that all of this debt should be under one form, and that the full amount may be known and the rate of interest lowered; be it

Resolved, That we issue bonds for the purpose of funding the outstanding bonded indebtedness of the district to an amount not exceeding twenty-five thousand dollars, and in the event of a less amount being needed then only such an amount shall be issued as shall be required to take up all said debt, said bonds to be issued as authorized by chapter 132 of the 18th General Assembly of the State of Iowa, authorizing the funding of outstanding bonded indebtedness of school districts.

That said bonds shall bear seven per cent interest, payable semi-annually, said interest payable at Bank of Rock Rapids, Iowa. Said bonds shall run for ten years, payable after five years at the pleasure of the district.

That the treasurer shall keep a record of the bonds issued, in numbers and amounts, and the names of the parties to whom sold, with their postoffice address.

That B. L. Richards, cashier, is hereby appointed refunding agent to negotiate said bonds.

That all indebtedness of the district before mentioned shall be taken up by said Richards only upon order from the treasurer of the district.

That all of the said indebtedness shall be paid by said Richards, and he shall render a statement itemized of said operations and surrender vouchers whenever demanded by the school board of this district.

On motion of Claflin, above motion unanimously adopted.

The act of the Legislature of the 18th General Assembly, chapter 132, authorizing independent school districts or district townships to issue bonds, is as follows:

Be it enacted by the General Assembly of the State of Iowa: SECTION 1. That any independent school district or district township now or hereafter having a bonded indebtedness outstanding, is hereby authorized to issue negotiable bonds at any rate of interest not exceeding seven per cent per annum, payable semi-annually, for the purpose of funding said indebtedness; said bonds to be issued upon a resolution of the board of directors of said district: Provided, That said resolution shall not be valid unless adopted by a two-thirds vote of said directors.

SEC. 2. The treasurer of such district is hereby authorized to sell the bonds provided for in this act, at not less than their par value and apply the proceeds thereof to the payment of the outstanding bonded indebtedness of the district, or he may exchange such bonds for outstanding bonds, par for par; but the bonds hereby authorized shall be issued for no other purpose than the funding of outstanding bonded indebtedness. The actual cost of the engraving and printing of such bonds to be paid for out of the contingent fund of such district.

SEC. 3. Said bonds shall not run more than ten years and be payable at the pleasure of the district after five years from the date of their issue: Provided, That in order to stop interest on them, the treasurer shall give the owner of said bonds ninety days' written notice of the readiness of the district to pay, and the amount it desires to pay; said notice to be directed to the postoffice address of the owner of the bonds: Provided further, That the treasurer shall keep a record of the parties to whom he sells the bonds, and their postoffice address, and notice sent to the address as shown by said record shall be sufficient.

SEC. 4. Said bonds shall be in denominations of not less than one hundred dollars, and not more than one thousand dollars; the said bonds shall be given in the name of the independent district or district township, and signed by the president and countersigned by the secretary thereof; and the principal and interest may be made payable wherever the board of directors may by resolution determine.

SEC. 5. When said bonds are delivered to the treasurer to be negotiated, the president shall take his receipt therefor, and the treasurer shall stand charged on his official bond with the amount of the bonds so delivered to him.

SEC. 6. The tax for the payment of the principal and interest of said bonds shall be raised as provided in section 1823, chapter 9, title XII of the Code: Provided, That if the district shall fail or neglect to so levy said tax, the board of supervisors of the county in which said district is located shall, upon application of the owner of said bonds, levy said tax.

SEC. 7. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 8. This act being deemed of immediate importance, shall take effect and be in force from and after its publication in the Iowa State Register and Iowa State Leader, newspapers published at Des Moines, Iowa.

Approved March 25, 1880.

That by virtue of authority conferred by said resolution the board of directors of said district township duly issued its bonds. The following is a copy of one of the bonds, from which the coupons in suit were taken.

$1,000. IOWA SCHOOL BOND. No. 1.

The school district of Doon, Lyon county, Iowa, for value received, promises to pay to..... .....or..... at the Bank of Rock Rapids, Iowa, on the 11th day of July, 1891, or at any time before that date after the expiration of five years from date of issue after ninety days' notice at the pleasure of said district the sum of

one thousand dollars, with interest at the rate of seven per cent per annum, said interest payable semi-annually on the 11th days of January and July in each year, at the Bank of Rock Rapids, on the presentation and surrender of the interest coupons hereto attached. This bond is executed and issued by the board of directors of said school district in pursuance of and in accordance with chapter 132, laws of the 18th General Assembly of Iowa, is in accordance with the laws and constitution of the state of Iowa, and in conformity with a resolution of said board of directors, passed in accordance with said chapter 132, at a meeting thereof held 9th day of July, 1881.

In Testimony Whereof, the said school district by its board of directors have caused this bond to be signed by the president and attested by the secretary this 11th day of July, 1881. J. SHARSWELL,

LON H. WAGNEN, Secretary. President.

The defendant has set up a number of defenses, but the principal defense relied upon is: "That said bonds and the coupons involved in this cause were issued in violation of section 3, article XI of the Constitution of Iowa, and are therefore null and void."

At the time said coupons and bonds were issued, to wit: July 11, 1881, this defendant, the district township of Doon, in Lyon county, Iowa, had no power or authority to create an indebtedness in any manner or for any purpose whatever in excess of the sum of six thousand, five hundred and fifty-one and 90-100 ($6,551.90) dollars, that being five per cent of the assessed value of all the real and personal property within said district township of Doon, as shown by the last state and county tax list previous to the issuance of said bonds.

That the total assessed valuation of all property within said district township of Doon was as follows:

For the year 1880, the sum of $131,038.

For the year 1881, the sum of $136,927, as shown by the state and county tax lists.

None of the coupons sued on in this cause, and none of the bonds to which they were attached were issued for the purpose refunding or paying outstanding legal indebtedness, and none of the proceeds of either were in fact used in refunding or paying any part of any outstanding legal indebtedness, and at the time of the issuance of said bonds and coupons attached, including those involved in this suit.

The said district township had an outstanding legal indebtedness equal to five per cent of the assessed value of all the property situated in said district, and had no power under the constitution and laws to create any other or greater indebtedness in any manner or for any purpose whatsoever.

It is admitted that plaintiff is the owner of the bonds from which the coupons in suit were detached, and that plaintiff purchased said bonds from the district and paid therefor the sum of twenty thousand ($20,000) dollars in cash.

Doon county was organized in 1872, and contained six congressional townships. In 1873 Dale township, consisting of two and a quarter townships, was set off from Doon. In 1877 Doon township was reduced by a reorganization to two congressional townships, and was in this condition at the time of the execution of the bonds from which the coupons in suit were taken.

When the bonds of defendant was purchased by plaintiff in July and August, 1881, there were standing upon the records unsatisfied judgments against the district from June 25, 1873, to May 19, 1880, amounting to $11,702.09, not including interest and costs.

In addition to this, there was outstanding at the time

of the issuing of the refunding bonds, seventeen to eighteen thousand dollars of bonds upon which there was due July 11, 1881, including interest, over $20,000, and it was upon this indebtedness, incurred by the defendant, (plaintiff in error) between the years 1873 and 1880, for which bonds had been issued by the district and at a time the territory comprising the district was, as shown by the findings of the court, much greater than at the time of the issue of the bonds, that these bonds in question were issued for the purpose of refunding this pre-existing bonded indebtedness.

And it is further shown that after the issue of the bonds, the district paid interest coupons due on the bonds in suit for four years, thus taking up and cancelling eight of the semi-annual interest coupons due on each of the bonds.

ARGUMENT.

There are several points over which there can be no controversy.

1st. That on the 9th day of July, A. D. 1881, the board of directors of the district township of Doon, passed and adopted a resolution in which they disclose that there is a large bonded judgment debt upon the district of Doon; that the records fail to show the total amount of said bonds outstanding and unpaid; that it is for the best interest of the district that all of this debt should be under one form, that the full amount may be known and the rate of interest lowered; that the bonds be issued for the purpose of funding the outstanding bonded indebtedness of the district to an amount not exceeding $25,000, and in the event of a less amount being needed then such amount shall be issued as shall be required to take up all of said debt. Said bonds to

be issued as authorized by chapter 132, 18th General Assembly.

2d. That on the 11th day of July, 1881, the board of directors of said district issued the refund bonds of said district to the amount of $25,000.

3d. That all of said bonds were by the district placed in the hands of B. L. Richards, refunding agent, to negotiate.

4th. That on the 25th day of July, 1881, the said Richards sold $10,000 to plaintiff, and on the 11th day of August, 1881, sold plaintiff $10,000 more, making a total of $20,000, for which plaintiff paid $20,000 in cash.

5th. That on the 20th day of December of the same year the said Richards sold the remainder of said issue to the "Society for Savings" and received therefor $5,000 in cash, these bonds being afterwards taken up by refund bonds issued by Garfield township.

6th. That Doon township secured $25,000 in cash. This amount the district retains.

7th. That the total amount realized from the sale of said bonds was used by Doon township in taking up its outstanding indebtedness for which the district was liable.

8th. That assessments were made for the purpose of paying the semi-annual interest upon those bonds for four years, and the interest was paid on the bonds for that period.

There can be no doubt but that there was more than $20,000 in judgment bonds, with interest, not including judgments unsatisfied of record, outstanding against Doon township at the time the bonds in controversy were issued.

The resolution of the board authorizing the issuing of the bonds recites: "That there is a large bonded judgment debt upon the district."

The findings of the court show that a meeting of the district board was had and a resolution authorizing an issue of bonds not exceeding $25,000 in amount, to take up and refund the outstanding indebtedness of the dis-

trict, under the provisions of chapter 132 of the 18th General Assembly, was held July 9, 1881.

Section 2 of the act authorizing the issuing of the bonds by the district provides: "The treasurer of such district is hereby authorized to sell the bonds provided for in this act, at not less than their par value, and apply the proceeds to the payment of the outstanding bonded indebtedness of the district, or he may exchange such bonds for outstanding bonds, par for par."

The findings of fact show that the bonds were sold at par, the district receiving $25,000 in cash.

Section 5 of said act provides: "When said bonds are delivered to the treasurer to be negotiated, the president shall take his receipts therefor, and the treasurer shall stand charged on his official bond with the amount of the bonds so delivered to him."

It will be seen that the act makes ample provision for the security of the funds realized from the sale of such bonds. It is true that an agent was appointed to negotiate the bonds. This is not usual. The proceeds realized from the sale of said bonds were to be held by the refunding agent, but could only be paid out on the order of the treasurer. The act further provides "that the treasurer shall keep a record of the bonds issued in numbers and amounts, and the name of parties to whom sold, with the postoffice address. It is only fair to presume that the officers performed their duty; that the bonds were in the first instance delivered to the treasurer of the district and the president took his receipt therefor.

The defences interposed by the defendant are:

First. The bonds and the coupons were issued in violation of section 3, article XI, of the Constitution of Iowa.

That the district township of Doon had no power or authority to create an indebtedness in any manner or for any purpose in excess of $6,551.90, that being five per cent of the real and personal property of the district township, as shown by the last tax lists previous to the issuance of said bonds.

That none of the bonds were issued for the purpose of refunding or paying outstanding legal indebtedness, and none of the proceeds were used in refunding or paying any outstanding legal indebtedness.

That the district township of Doon had an outstanding legal indebtedness equal to five per cent of the assessed value of all the property in said district, and had no power under the constitution and laws to create any other or greater indebtedness in any manner or for any purpose whatever.

Second. That said bonds were not issued in compliance with chapter 132, laws of the 18th General Assembly, but in violation thereof. That all the bonded indebtedness, both legal and illegal, did not amount to so much as half the proceeds of the bonds issued to plaintiff, and therefore were issued for other purposes than to refund outstanding bonded indebtedness.

Third. That the bonds were not legally issued or signed by the officers of the district, or that any legal resolution or action of the board was ever passed or taken. That said bonds are fraudulent and without consideration or other valuable thing moving to the defendant, and are therefore illegal and void.

The principal defense relied upon is that the amount of the bonds issued is in excess of the constitutional limitation.

The principal defense relied on by defendant (plaintiff in error) in this action, as shown by its answer and the findings of the court, is that the bonds to which the coupons belong are void, for the reason that the indebtedness of the district at the time of the issue of the bonds exceeded five per cent of the taxable property of the district, and this being in excess of the constitutional limitation, is forbidden by section 3 of article XI of the Constitution of Iowa.

The bonds were issued under the provision of chapter 132, acts of the legislature 18th General Assembly, which has already been set out in full in the statement of the case. It will be noticed that under the provisions of this law bonds are not to be, nor can they be, issued

for the purpose of making a debt on the district or increasing one already made; but, on the contrary, can only be issued for the purpose of putting an indebtedness already existing into a different form, and in the case at bar, as shown by the resolution of the board of officers of the district, also for the purpose of funding it at a lower rate of interest. In order to take advantage of this provision of the law it is necessary that there be an existing indebtedness against the district. And this must be ascertained before any further steps are taken, and necessarily by the terms of the act must be done by the proper officers of the district issuing the bonds.

The act provides that the bonds are to be issued upon a resolution of the board of directors of said district: Provided, That said resolution shall not be valid unless adopted by a two-thirds vote of said directors.

Now, what shall this resolution consist of? In order to give this law any effect at all it must necessarily be a finding by the proper officers that an indebtedness exists against the district and a fixing by them of the amount as near as possible. And when this is done, and only then, is the district empowered to issue its bonds.

That the purchaser of these bonds, when this resolution is made and the bonds issued in pursuance thereof, with the proper recitals thereon, as in the case at bar, has made an examination of the resolutions and the law showing that the district has power to issue bonds, has done his whole duty in the premises is, we think, too plain for contradiction; but as to his rights under the resolution and recitals on the bonds we will argue that at length in another part of the brief.

It will be noticed that the theory of the defense is that these bonds and coupons are void because issued in excess of the constitutional limitations, or, in other words, that at the time of the issue of the bonds such an indebtedness existed against the district that no power existed to issue bonds, and in supporting this we are referred is the answer to the constitution which prohibits an indebtedness exceeding five per cent of the assessed value of the property, this to be ascertained by

an inspection of the last state and county tax lists previous to the incurring of the indebtedness.

Now, we may ask, what has this to do with the case at bar? It will be seen by mere inspection that this provision applies to cases where there is an attempt made either to incur, or increase an indebtedness already existing; and was this action based on bonds issued under the provisions of chapter 98, 12th General Assembly, all that is said by plaintiff in error in support of this defense might be applicable even against a *bona fide* holder of bonds containing recitals such as in this case, but can have no application where bonds are issued under chapter 132 not for the purpose of increasing the indebtedness existing, but, as shown by the resolution, for the purpose of placing in another form and reducing the rate of interest on an indebtedness already incurred.

If the position taken by the district in the argument in this case is correct, then we have this remarkable state of affairs; that is, the legislature has passed a law for the express purpose of allowing school districts to issue bonds for the purpose of placing their indebtedness at a lower rate of interest rendered nugatory, because they had, at the time of attempting to exercise the power, an indebtedness of say (for illustration) $10,000 which is the full amount they can incur by reason of the limitation; and this issuing of this amount in bonds under this law for the express purpose of taking up this indebtedness is an increasing of their indebtedness to $20,000, which is double what they can legally incur. In other words, no school district that has existing an indebtedness up to the amount of the constitutional limitation can avail itself of the law for the reason that bonds issued by it, no matter how small, would increase the indebtedness beyond the constitutional limit and consequently be void, even in the hands of *bona fide* holders, and notwithstanding the recitals contained in them; but this is not the law.

It will be noticed that the findings of the court show that the only evidence introduced by plaintiff in error in support of its answer is to show that at the time of

the issuing of the bonds over which this litigation has arisen that the indebtedness of the school district exceeded the constitutional limit. This evidence under the ruling of the supreme court of Iowa is incompetent for this purpose.

In the case of *Miller et al. vs. Nelson*, 64 Iowa, 458, it is decided. We quote from second part of syllabus:

"School District.—Bond of: Proof of invalidity: What is not:

"The bond of a district township is not shown to be invalid by proof only that the district was indebted beyond the constitutional limit when the bond was issued, for it may have been given in payment of a judgment against a district and thus be binding upon the district under the doctrine of *S. C. & St. P. Ry. Co. vs. Osceola County*, 45 Iowa, 168; 52 Id. 26."

It will be seen that the doctrine of these two cases, which will be more fully referred to hereafter, and which were decided in cases involving the validity of county bonds issued under the provision of section 3275 of the revision of 1860, as amended by chapter 37 of the acts of the 14th General Assembly of the State of Iowa, providing for the issuing of bonds for the payment of judgments existing against counties, is directly applied to bonds issued by school districts, and under this decision this proof on the part of plaintiff in error in this case would be no defense even as against a party who took the bonds with full notice of all that is claimed by the defense. To the same effect on the questions of proof is the case of *Mosher vs. The School Dist. of Steamboat Rock*, 42 Iowa, 632. But this is not an open question in Iowa. In the case of *S. C. & St. Paul Ry. Co. vs. Osceola County*, cited above, the court says: "The judgment bonds of a county in the hands of innocent holders for value, without notice of their illegality for any cause, cannot be defeated by showing that the judgments were rendered upon warrants issued in excess of the constitutional limitation of five per cent, and that the board of supervisors fraudulently omitted to interpose the defense when the warrants were sued upon."

It will be noticed in this case that the court only goes to the extent of declaring those bonds good that have been issued for the payment of judgments rendered on warrants issued in excess of the limit, but in case of *Same vs. Same*, 52 Iowa, 26, they go much further. In the latter case the facts show that bonds were issued under this same provision of law; that during the year 1873 judgments were rendered against the county upon warrants issued in 1872 and 1873 to the amount of $21,466.35, and to pay the same, and interest and costs, the county during said year issued its negotiable judgment bonds under chapter 37 in the amount of $21,600. The principal of these bonds was unpaid. In 1872 the county issued ten negotiable bonds of $500 each for the purpose of building a court house, four of which remain unpaid. From August 1, 1874, to July 6, 1876, the board of supervisors issued its negotiable bonds in the manner and form prescribed in section 289 of the Code of 1873, to the amount of $24,200, and the same were sold or exchanged under the provisions of section 289 and the following sections of the Code, for the warrants or other evidence of indebtedness against the county. Of the above amount $9,000 of bonds were issued in exchange for judgments which had been obtained against the county upon county warrants, and the sum of $15,200 were issued in exchange for county warrants held against the county. All of the bonds were in the hands of *bona fide* holders for value, and all of the warrants aforesaid, both those reduced to judgment and those funded without being reduced to judgment, were issued in excess of the limit of indebtedness which the county might incur under section 3, article XI of the Constitution.

The court holds that under the decision made in the 45th cited above, that these bonds are good in the hands of a *bona fide* holder for value, though, as the facts show, that $15,200 of these bonds had been issued for the payment of warrants never reduced to judgment, and although these warrants had been issued in excess of the constitutional limitation.

In the case of *City of Sioux City vs. Weare*, 59 Iowa, 95, this is incidently referred to, and on page 97 it is said: "The amendment appears to have been made in part with reference to the constitutional restrictions upon municipal indebtedness limiting it to five per cent of the value of taxable property; but the constitutional restriction does not appear to us to have any application. It may be greatly doubted whether the validity of the bonds could be properly assailed by reason of the constitutional restriction, even if the plaintiff's indebtedness exceeded the constitutional limitation at the time the judgment was rendered. It is very clear that if it did not, and there is no infirmity in the judgment, for that reason the bonds issued in payment of it are not invalid merely by reason of the constitutional restriction, and the fact that the limitations had been exceeded, as the amendment avers, at the time that they were issued. *Their issuance did not increase the plaintiff's indebtedness.*"

We quote this because it is in line with those from 45th and 52d Iowa, and more particularly for the purpose of showing that it lays down the doctrine we have argued: that the issuance of these bonds is not an increasing of the indebtedness of the district that existed at the time the bonds were issued. The doctrine is approved again and applied to school districts in the case of *Miller et al. vs. Nelson*, 61 Iowa, 458, cited above.

A close examination of the Iowa authorities will show that the cases cited include all of that state in which anything has been decided or said in regard to bonds issued under the provisions of chapter 132; that all of the other cases decided in this state arise under the various laws that permit a county school district or other municipality to incur or increase an indebtedness already existing, and consequently can have no application to the case at bar.

The case of *School District vs. Stone*, 106 U. S. 183, was a case of this character. The bonds having been issued under the provision of chapter 98 of acts of 12th General Assembly, which permitted independent school districts

when authorized by a vote of the electors to borrow money to erect a school house, the amount of course to be within the constitutional limitations. In this case the questions passed upon was not in relation to bonds issued to fund or take up an existing indebtedness, but was as to the legality of bonds issued to increase or create an indebtedness. We might say here that the supreme court in this case say, after giving the recitals on the bonds, (which are, "This bond is issued by the board of school directors by authority of an election of the voters of said school district held on the 31st day of July, 1869, in conformity with the provisions of chapter 98 of acts 12th General Assembly of the state of Iowa"): "Had the bonds recited that they were issued by authority of the election of July 31, 1869, *and* in conformity with the provisions of the statute referred to, there would, in view of the decisions of this court, be more force in the argument of the defendant in error. *Town of Coloma vs. Eaves*, 92 U. S. 484; *Town of Venice vs. Murdock*, id. 494; *Converse vs. City of Fort Scott*, id. 503; *Marcy vs. Township of Oswego*, id. 637; *Commissioners of Douglas County vs. Bolles*, 94 id. 104; *Commissioners of Johnson County vs. January*, id. 202; *Buchanan vs. Litchfield*, 102 id. 278. And we should then be obliged to decide whether, in view of the constitutional provision, a false recital by the school board as to the value of the taxable property would conclude the district as between it and a *bona fide* purchaser for value; for, in such case, since the statute itself contains, substantially, the same limitation upon indebtedness by independent school districts as is prescribed by the state constitution for county, or other political corporations, a distinct recital that the bonds were issued in conformity with the statute, would fairly import a compliance with the constitution. But the recitals do not, as we have said, necessarily import a compliance with the statute or the fundamental law of the state upon that subject. They necessarily imply nothing more than that the bonds were issued by authority of the electors, and that the election was held in conformity with the statute. The

statute may have been pursued as to the notice required to be given of the time and place of the election, and as to the manner in which the will of the voters was to be ascertained, and yet it may have been disregarded in respect of the limit it imposed upon district indebtedness. The declaration, therefore, that the election was held in conformity with the statute does not, with sufficient distinctness, imply that the indebtedness voted was less than five per cent on the value of the taxable property of the district, as shown by the state and county tax lists.

"This construction of the words employed in the bonds is characterized by counsel for the defendant in error as too narrow and technical. It may be a strict construction, and such, it seems to the court, ought to be the rule when it is proposed, by mere recitals on the part of the officers of a municipal corporation, to exclude inquiry as to whether bonds, issued in its name, were made in violation of the constitution and of the statute, of the provisions of which all must take notice. Numerous cases have been determined in this court, in which we have said that where a statute confers power upon a municipal corporation, upon the performance of certain precedent conditions, to execute bonds in aid of the construction of a railroad, or for other like purposes, and imposes upon certain officers—invested with authority to determine whether such conditions have been performed—the responsibility of issuing them when such conditions have been complied with, recitals, by such officers, that the bonds have been issued 'in pursuance of,' or 'in conformity with,' or 'by virtue of,' or 'authority of,' the statute, have been held, in favor of *bona fide* purchasers of value, to import full compliance with the statute, and to preclude inquiry as to whether the precedent conditions had been performed before the bonds were issued. But in all such cases, as a careful examination will show, the recitals fairly imported a compliance, in all substantial respects, with the statute giving authority to issue the bonds. We are unwilling to enlarge or extend the rule, now established by numerous

decisions. Sound public policy forbids it. Where the holder relies for protection upon mere recitals, they should, at least, be clear and unambiguous, in order to estop a municipal corporation, in whose name such bonds have been made, from showing that they were issued in violation, or without authority, of law."

We have referred to this decision at some length in this part of the argument for the reason that it is the principal one decided in the supreme court of the United States in which the question of the legality of school district bonds issued in Iowa has come up; and also to show that that court has virtually decided that in cases where the recitals are as full as in the case at bar, they would hold the bonds good even where they were issued to increase the debt of the district beyond the constitutional limitation.

The case of *Bates vs. School District of Riverside*, 25 Fed. Rep. 19, an examination will show was decided upon the grounds that the recitals were not sufficient to create an estoppel, and the latter part of that decision could have nothing to do with the case at bar, first, because it is shown by the opinion that the bonds in suit were of two series, one issued under the provision of sections 1821 to 1823 of the Code of Iowa, and chapter 121 of the acts of the 17th General Assembly, and the second series issued under chapter 132, the same as these, but the opinion shows conclusively that they were both treated as the incurring or increasing of the debt of the district, and the point here raised was not passed upon or in any manner brought to the attention of the court in that case, and the same can be said of the cases of *Geneva Nat. Bank vs. Independent School District*, 25 Fed. Rep. 629, and *Nesbit vs. same*, 25 Id. 635.

This, then, brings us to the question of the rights of plaintiff in the case as a *bona fide* purchaser and holder of these bonds for value before maturity of the same. The findings show that he purchased them from one Richards, the duly appointed and authorized agent of the district, paying therefor the full face value, or $20,000 in money for $20,000 worth of the bonds, without

any notice except that given on the face of the bonds themselves.

We think that it cannot be disputed that under these facts he is as much protected as would he be had they come into his hands after passing through the hands of other persons, and in order to cut off his rights as such holder it would be necessary for defendant to allege and prove that he purchased the same with full actual notice of any defects they might contain.

This is the settled law in Iowa. In case of *Griffith vs. Bender*, 35 Iowa, 138, it is said: "As municipal bonds are issued for sale in the market the right and title of the first purchaser directly from the municipality are as fully enforced and protected as if he were the person buying of a subsequent purchaser thereof. The sale thereof is to be treated as the sale of a chattel." To the same effect is the case of *Morris Canal and Bank Co. vs. Fisher*, 1 Stockton, 9, N. J. Eq. 667, on page 700.

The argument of plaintiff in error, when analyzed, shows that they rely entirely on the fact that the bonds of which the coupons in suit are a part were issued in excess of the constitutional limit, and are therefore void, and we have cited a number of authorities on the point that an issue of bonds under chapter 132 is not, nor can it be, an increase of an indebtedness. In the very nature of things, before any bonds can be issued under the provisions of this chapter, a debt such as is contemplated must be shown to exist. The findings of the court show that a meeting of the officers of the district township was held. A resolution was passed showing that a large bonded indebtedness existed against the district of Doon, the records failing to show the amount, and it was resolved that bonds be issued in an amount not exceeding $25,000, and in the event of a less amount being needed, then in such less amount as might be necessary to take up all of such indebtedness. And in pursuance of this resolution, $25,000 in bonds were issued, of which defendant holds $20,000, and on these facts it is claimed that these bonds are void because the issue of them increases the debt beyond the

five per cent limitation, and to this and that the defendant in error did not personally see that the moneys paid by him to the district for the bonds were applied to take up this indebtedness, is the argument of plaintiff in error directed.

In other words, they claim:

1st. That the issue of bonds to refund an existing debt is the making of a debt within the provisions of this limitation; and.

2d. That in order to prevent this increase of indebtedness, a purchaser of bonds must, in order to insure the validity of his purchase, see that the money paid by him is applied to the extinguishment of the indebtedness that the bonds were issued to refund.

If the issue of bonds under chapter 132 is the creation of an indebtedness against the district, then the authorities cited are in point; if it is not, then none of the cases cited have any application to the case at bar, and the findings and judgment of the circuit court are right.

That the issue of these refunding bonds to take up and pay off a pre-existing bonded indebtedness is not the creating of a new debt or the increasing of one already in existence, would seem to be axiomatic; but, as plaintiff has devoted his argument principally to this point, we refer the court to the case of *Austin vs. District Colony*, 52 Iowa, 102; *R. R. Co. vs. Osceola County*, 45 Id. 168; *Sioux City vs. Weare*, 59 Id. 95; *S. C. & St. P. Ry. Co. vs. Osceola County*, 52 Id. 26, and which have been commented on and set out at some length in the argument.

In addition to this it is said in *Powell vs. Madison*, 107 Ind. 106, under substantially the same constitutional provisions as Iowa, that "the constitutional provision is wholly prospective in its operation and does not prohibit the issue of new bonds to provide at their par value, for the payment of an old debt, or the substitution of new evidences of a pre-existing debt, because the doing of that is not, in any legal sense, the creation of new indebtedness. Nor is the funding of interest already due, or the execution of coupons for the pay-

ment of interest which will thereafter accrue upon a a pre-existing indebtedness, either the creation of a new debt or in legal contemplation an increase of such pre-existing indebtedness."

This, we think, is sufficient to say on the point that these bonds did not create a new debt nor increase one already in existence, and this being true, the argument of plaintiff fails to show that the findings and judgment of the circuit court are erroneous.

On the 2nd point argued, that it was the duty of the defendant in error to see that the money paid by him was properly applied to the taking up of the indebtedness which the bonds were issued to refund, it needs but little attention. The finding of the court shows that at the time of the issuing of these refunding bonds, there was an outstanding bonded indebtedness of $17,000 to $18,000, upon which there was due on the 11th day of July, 1881, over $20,000. In addition to this there was at that time a judgment indebtedness of about $11,-702.09, and as far as this case is concerned, it is shown by the findings of the court that all of this indebtedness was a legal liability against the district. And the findings of the court show that of the money received for these bonds, all of it was applied in the payment of this existing indebtedness, either bonds or judgments, by the chosen officers of the district and over whose actions defendant in error had no control.

He purchased the bonds in open market and paid his money for them to the chosen agent of the district, and when this was done all his duty in the premises was performed, and as to whether or not the proceeds were applied to the extinguishment of the bonded indebtedness, the judgments existing against the district, or whether the agents and officers of the district applied the same to the payment of their private debts, he had not, and could have no more to do than would one of the native tribes whose remote ancestors at one time claimed the soil upon which the district is located.

The doctrine contended for is not supported by a single authority, it is against the dictates of common

sense, and were it recognized for a moment by the courts, it would in a moment, not deteriorate in value, but absolutely destroy millions of dollars in securities that are now in existence and recognized as valid securities by the world. Let us see what safe guards are thrown around the district to insure the proper use of its funds.

In the first place, its affairs are managed by a board of directors who are chosen by the resident electors and tax payers of the district and in whose choice a non-resident, such as is defendant, has no voice.

Section 5 of the act under which these bonds were issued, provides that they shall be delivered to the treasurer to be negotiated, and the president shall take his receipt therefor and the treasurer shall stand charged on his official bond with the amount of the bonds delivered to him.

Section 2846, McLain's statutes, provides for the treasurer giving a bond and his liability thereon. And the supreme court of Iowa has decided in the cases of *District Township vs. Hardenbrook*, 40 Iowa, 130. *District Township vs. Morton*, 37 Id., 550, and *District Township vs. Smith*, 39 Id., 9, that the treasurer is absolutely liable on this bond for any money coming into his hands from any source, and yet, notwithstanding this, plaintiff in his argument contends that the circuit court committed a radical error in finding that defendant in error was not obliged to look after the proper application of the money derived from the sale of the bonds. But if we were to admit, for the purpose of argument, that this doctrine contended for was true, yet it would not avail plaintiff in error, for an examination of the findings and the report of the financial agent of the district, which is made a part of them, shows that the funds derived from the sale of the bonds were used to pay off the bonded and judgment indebtedness existing at the time of the issue of the bonds, and the application of the money was in strict accordance with the provisions of the act, section 2 providing that the proceeds of the sale of the bonds shall be used for no other purpose than

to pay off the bonded and judgment indebtedness of the district. And this it is shown was the use made of the money.

We think enough has been said in answer to the argument of the plaintiff, and will next take up another phase of the case, which was raised in the court below, but which, owing to the findings and judgment of the court on the other points, it did not become necessary to pass upon, and upon which we claim that if all the points raised by plaintiff in the argument were true, yet the judgment should be in favor of the defendant in error.

The point referred to is that the plaintiff in error is estopped from setting up as a defense, that at the time of the issuing of the bonds, the district had an indebtedness in excess of the statutory and constitutional limit for the following reasons:

1st. The plaintiff (defendant in error) being a *bona fide* purchaser of the bonds in suit for a valuable consideration before maturity, he was not obliged to look further than the recitals contained on the bonds themselves and to the laws therein referred to. The recitals are: "This bond is executed and issued by the board of directors of said school district in *pursuance* of and in *accordance* with chapter 132, laws of 18th General Assembly of Iowa, is in *accordance* with the laws and constitution of the state of Iowa and in *conformity* with a resolution of said board of directors passed in accordance with said chapter 132 at a meeting thereof held 9th day of July, 1881. In testimony whereof the said school district, by its board of directors, have coused this bond to be signed by its president, and attested by the secretary, this 11th day of July, 1881."

These recitals are full and complete, and a person before making a purchase would simply have to make an examination of what was therein recited, and the first thing to be ascertained would be the power of the district to issue these bonds. This would necessarily be ascertained by an examination of chapter 132. An examination of this would show ample power on the part

of the district to issue the bonds in case such indebtedness existed. The next inquiry then would be directed to the fact as to whether or not an indebtedness, such as is contemplated in chapter 132, did exist. How would this be ascertained? Certainly it could only be done in one way, and that would be by an examination of the resolution referred to in the recitals of the bond and an examination of it would show that a large bonded indebtedness existed against the district. The resolution, as shown in the record, says "that as there is a large bonded judgment debt upon the district of Doon, and as the records fail to show the total amount of said bonds outstanding and unpaid, and as we deem it for the best interest of the district that all of the debts should be under one form, and that the full amount may be known and the rate of interest lessened, be it resolved, that we issue bonds for the purpose of funding the outstanding bonded indebtedness of the district to an amount not to exceed $25,000, and in the event of a less amount being needed, then only such an amount shall be isssued as shall be required to take up all of said debts. Said bonds to be issued as authorized by chapter 132 of the 18th General Assembly of the state of Iowa, authorizing the funding of outstanding bonded indebtedness of school districts."

In the first place there can be no question but that under chapter 132 it is made the duty of the officers of the district township to ascertain the amount of existing indebtedness of the district. This power is necessarily given them by the act itself, and an examination of the powers and duties of these officers, as given them by the statutes of Iowa, show this conclusively.

Section 2823, McLane's Annotated Statutes of Iowa, defines the duties and powers of the electors of these districts when assembled at their annual meetings, and outside of this section, except in the one following, which only applies to special meetings in case of destruction of a school house, is anything found limiting in any manner the powers and duties of the district board, or that in any manner fixes on any person or tribunal

the duty of ascertaining the amount of this indebtedness. This being the case it makes it one of the implied duties of these officers to ascertain the indebtedness, and when once ascertained by them a party investigating the indebtedness of the district, when he has ascertained that the proper officers has performed this duty, is not required to investigate further, and the district is estopped from setting up as a defense that these, the chosen officers of the district, have failed to properly perform a duty made incumbent on them by law, as against a *bona fide* holder of its bonds. This is so fully supported by the authorities that there can be no question.

In the case of *Kelly vs. Town of Milan*, 21 Fed. Rept., 842, after referring to the recitals on the bonds the court says: "Under the well established rules of decision on this subject, these recitals are all sufficient to estop the town as against a bona fide holder for value from denying the fact of the sufficiency of population, and would be a plenary municipal decision of that fact if the town authorities were vested with power to decide the question. *Wilson vs. Salamanca*, 99 U. S., 499; *Coltona vs. Eaves*, 92 U. S., 484; *Marcy vs. Oswego*, 92 U. S., 637; *Buchanan vs. Litchfield*, 102 U. S., 278. There are many other cases to which these will be a guide. But the cases are carefully reviewed in the recent one of *Northern National Bank vs. Trustees of Porter Township*, 110 U. S., 608, and the rule there laid down that this estoppel only operates when the duty of ascertaining the facts has been devolved by law upon the municipal or other authorities which undertakes to determine it by the recitals. The authority may be conferred by special legislation in the act authorizing the bonds or elsewhere, or may grow out of the ordinary duties imposed by law upon the particular officers or agents."

In the case at bar it is shown that the power is necessarily given by the law itself, and if it were silent it cannot be contradicted, but that it is one of the implied duties belonging to these officers to exercise.

In the case of *Sherman County vs. Simons*, 109 U. S., 735. This case is so much in point with the case at bar

that we quote at some length. The action was brought on coupons of certain bonds issued by the commissioners of Sherman county, Nebraska, dated January 1, 1876, under an act of the legislature of that state, approved February 18, 1875, entitled "An act to authorize Howard, Greely and Sherman counties to issue bonds for the purpose of funding the warrants and orders of said counties." After providing for the issuing of the bonds, and that they are to be used for the payment of debts outstanding on the 1st day of January, 1875, it is provided that no more of the bonds authorized to be issued by virtue of this act shall be issued than is necessary to pay off and redeem such warrants so outstanding; and provides further, that the said commissioners shall not issue said bonds to exceed in value the amount of said indebtedness up to January 1, 1875, nor shall said bonds be negotiated at a less price than 85 cents on the dollar. The act itself will be found on page 265, session laws of 1875, Nebraska, and an examination of it shows that there is an express limitation in the act as to the amount of indebtedness the counties named in the act can incur by issuing such bonds. An examination of it will further show that nowhere in the act is any express power given to the commissioners or others in the first instance to ascertain the actual outstanding indebtedness of the county about to avail itself of this act by the issuing of bonds to pay off the existing indebtedness on the 1st day of January, 1875.

The answer in the case cited, set up that the bonds were issued under said act by the commissioners of said county of Sherman to the amount of $45,000, and that on the 1st day of January, 1875, the debts of said county did not exceed the sum of $16,000, and that said bonds were negotiated for less than 85 cents on the dollar. On this issue the case was tried to the court. The bonds recited on their face that they were issued by authority of said act. The court found that on January 1, 1876, the commissioners of Sherman county, in pursuance of the act of February 18, 1875, issued, among others, the bonds and couponsdescribed in the petition,and the same

came into possession of the plaintiff, who was a bona fide purchaser, for value without notice of defects other than appear on the face of the bonds, and was still the holder and owner of said bonds and coupons. The record of the commissioners of Sherman county showed the allowance of $15,000 in claims against the county from the organization to January 1, 1875, for which warrants were drawn on the treasurer and no more, but they also showed that the commissioners at one of their meetings estimated the amount of county indebtedness which might be funded at the sum of $36,874.95, for which it would be necessary to issue bonds to the amount of $43,400, and that bonds were issued pursuant to such estimate, but it was not shown what the actual indebtedness of the county was at the time the bonds were issued; upon this finding the circuit court rendered judgment for plaintiff for $5,671.60.

A comparison of this resolution, with that of the officers of district, in this case fixing the amount of the indebtedness of Doon township for the purpose of issuing the bonds in suit, will show that they are identical with each other, and an examination of the statutes of Iowa, and the cases cited above, will also show that for the purpose of making this estimate the officers of Doon township had the same powers and under the law exercised the same duties in regard to the financial affairs of the district of Doon as did the commissioners of Sherman county in the financial affairs of Sherman county. Mr. Justice Wood delivered the opinion of the supreme court. He says: "The plaintiff in error insists that the facts found by the court shows an issue of bonds by the county in excess of the amount authorized by the statute, and that they are therefore void."

The defendant in error is found by the circuit court to be a bona fide holder for value, according to repeated decisions of this court. Being such he was bound not to go behind the law and the recital of the bonds to inquire into the amount of the county indebtednes. *March vs. Township of Oswego*, 92 U. S., 637; *Humboldt Township vs. Long, Id.*, 642; *Wilson vs. Salamanca*, 92 U. S., 499. But

if it be conceded that a purchaser of bonds was required to inspect the records of the county to ascertain the amount of its indebtedness, and whether there had been an over issue of bonds, it appears from the findings of facts that the records of the commissioners contained an estimate of the indebtedness of the county made by them for the express purpose of fixing the amount of bonds to be issued and in pursuance of which they were issued, which showed there was no over issue. This was a decision by the very officers whose duty it was under the law to fix the amount of bonds which could be lawfully issued. A purchaser of bonds was not required to make further inquiry, and if the findings of the commissioners was untrue, he would not be affected by its falsity.

See cases above cited. Also

Lynde vs. The County, 16 Wall. 6.
Commissioners vs. Jamary, 94 U. S. 202.
County of Warren vs. Marcy, 97 U. S. 96.
Commissioners vs. Bolles, 94 U. S. 104.
Pana vs. Bowler, 107 U. S. 529.

We have quoted at some length from the above case for the reason that it is a leading one on the point being discussed in this branch of the argument; because it is well supported by principle and authorities, and because the facts upon which it was decided are identical with the facts in the case at bar. The findings of the lower court in regard to the resolutions of the commissioners of Sherman county, fixing the amount of the indebtedness of the county for the purpose of issuing the bonds being identical with the resolution of the district officers of plaintiff in error, and which shows conclusively that the bonds in suit were issued on an estimate of the indebtedness of the district made by its officers whose duties it was to make such estimate, and behind which plaintiff, under the authorities quoted, was not bound to make inquiries, but had a right to rely upon it and the recitals contained in the bonds.

This is fully recognized by the supreme court of Ohio in case of *State ex. rel. Robertson vs. Board of Education*

of Perrysburg Twp. 27 O. S. 96. It is said: "Power to issue such bonds appears to have been given by the law of March 13, 1868, 65 Ohio laws 24, upon the conditions therein prescribed. There is much dispute whether or not these conditions were complied with, it being urged by the defendants that the board of education did not act in pursuance of the authority conferred by law. This may be true and still the bonds be valid in the hands of an innocent holder for value. If power to issue were conferred, however irregular may have been the step taken in the attempt to exercise that power, the bonds cannot be declared void in such a proceeding as this. It is not unlike jurisdiction in a court. If the jurisdiction to do a certain act was really conferred by law, although the proceedings may have been erroneous, they cannot be collaterly impeached."

See also *State vs. Commissioners*, 37 O. S. 526.

There is still another element, as shown by the findings, that enters into this case that was not in the case of *Sherman County vs. Simons*, cited above. That is, that after the issuing of the bonds the defendant levied, or caused to be levied, for a number of years, taxes for the payment of interest, and did pay the interest coupons on said bonds from the date of their issue up to and including the coupons due and payable July 11, 1885. The interest being payable semi-annually, it is shown that there was made by the district payment of eight distinct coupons on the bonds, or, in round numbers, that there was levied, collected and paid on these bonds the sum of $5,600 of interest before any one thought of repudiating this debt.

It is also further disclosed by the findings that defendant paid for these bonds the full face value of the same, and the district received every dollar of this money, and has had the benefit of the same.

In the case of *Supervisors vs. Schenk*, 5 Wall. 781, it is said counties were authorized upon a proper vote to subscribe for stock and pay in bonds; an election was ordered by the county court when under the law it should have been ordered by the board of supervisors; the elec-

tion was duly held; the proposition was carried and the supervisors subscribed the bonds, received the stock, ordered the levy of taxes and paid the coupons for a period of from nine to ten years. The court held that by its acquiescence, conduct and acts the county had ratified the bonds in the hands of an innocent holder, and that the county was estopped to set up the irregularity mentioned as a defense.

To the same effect is the case of *Pendelton County vs. Amy*, 13 Wall. 297.

In *Portsmouth Savings Bank vs. City of Springfield*, 4 Fed. Rep. 276, Judge Drummond said: "All questions of doubt in relation to the validity of these bonds should be answered in favor of their legality, because the city has recognized their validity repeatedly, and has paid the interest on them for a series of years. Therefore, under such circumstances as these, it should appear beyond all doubt that the issue of the bonds was void. It has issued the bonds, obtained the money and the benefit it has conferred, and law and equity declare the debt should be paid."

Could language be used more apposite than is this to the case at bar. All of the elements spoken of by the judge exist in this case.

In the case of *First National Bank of Oswego vs. Town of Walcott*, 7 Fed. Rep. 892, it is said: "Whether the commissioners of the defendant complied with the statutory requirements in issuing its bonds or not, the defendant ratified their act by paying interest for six or seven years upon the bonds and retaining the stock of the railroad company received in exchange for the bonds."

In the case at bar they have retained the $20,000 of money paid by plaintiff for the same amount of bonds, and caused to be levied and collected taxes with which the interest on the bonds has been paid for four years.

In case of *Whiting vs. Town of Potter*, 2 Fed. Rep. 517, it is decided that where a municipality has issued its bonds under a statute and invested them in railroad stock, which it retained and had for a long time paid

interest on such bonds, held, that it was estopped as against a *bona fide* holder for value of interest coupons thereon from questioning the validity of such bonds or coupons; but their conduct was a direct ratification of the acts of those who had issued them.

In *Third National Bank of Syracuse vs. Town of Seneca Falls*, 15 Fed. Rep. 783, it is held: "Where a town has received railroad stock and issued therefor its bonds, and has paid the interest thereon for a succession of years, it is estopped by its own acts, which amount to a ratification and confirmation.

In the case of *Johnson vs. Stark County*, 24 Ill. 75, it was held that "where shares in a railroad company were received by the officers of a county in exchange for their bonds were never returned, and the proper officers of the county voted for directors at two elections, and the supervisors paid two annual installments of interest, held, that those acts unexplained were as satisfactory evidence of a design to ratify the issue of the bonds as if it had been done by an order of the board of supervisors."

To the same effect is the case of *Keitsburg vs. Frisk*, 34 Ill. 421.

In the case of *Irwin vs. Ontarrio*, 18 Blatch. 259, it is held: "Where a town issues bonds, accepts stock in the railroad company, pays interest on the bonds for three years, and the road is built and put in operation, the town must be held to have ratified the bonds.

In *County of Clay vs. Society for Savings*, 13 Otto, 579, it is said on this point: "The record shows that taxes had been levied to pay interest, and that interest had been paid on the subscription bonds for eleven years, and on the donation bonds for nine years."

This fact would of itself cure mere irregularities in the issuing of the bonds when they were sued on by a *bona fide* holder for value.

This doctrine has been passed upon and sustained by the supreme court of Wisconsin, in the cases of *Knapp vs. Grant*, 27 Wis. 147; *Mills vs. Gleason*, 11 Wis. 493;

Kneeland vs. Gilman, 24 Wis. 39, and in *Dean vs. Gleason*, 16 Wis. 1.

Also by the supreme court of Ohio.

In the case of *Shoemaker vs Goshen Township*, 14 O. S., it is said: "Acts of subsequent acquiescence and ratification will estop the township from objecting to the validity of the bonds in the hands of an assignee for value who has taken them on the faith of such acquiescence on account of any irregularities attending their execution and issuing short of an absence of power or such illegality as would render them absolutely void; and notice of such irregularities on the part of the assignee will not defeat the estoppel."

To the same effect are:

Garrett vs. Van Horn, 7 O. S. 327.

Smead vs. Union Township, 8 O. S. 394.

Goshen Township vs. Shoemaker, 12 O. S. 624.

The same is held in Missouri.

Barrett vs. County Court, 44 Mo. 201.

Hannibal R. R. Co. vs. Marion County, 36 Id. 294.

Steims vs. Franklin County, 48 Id. 185.

Also in Kansas.

Leavenworth R. R. Co. vs. Com's of Douglas Co. 18 Kan. 170.

On this question of ratification it is said by Daniels in his work on Negotiable Instruments, vol. 2, 3d ed, page 558: "There are four ways, according to the decisions of the United States supreme court, and of some of the state courts, in which a municipal corporation may estop itself from objecting to the validity of corporate securities. (1) By its members failing to interfere and enjoin their issue when they are about to be executed and thereby acquiescing; (2) by their submitting to taxation to pay them; (3) by their voting for or submitting to the payment of principal or interest by the corporation officers; (4) by receiving and keeping the proceeds or benefits of them."

This is the conceded law and no decisions can be found in the federal courts in conflict with it. All cases that have been decided contrary to this an examination

will show, were decided because there was an absolute lack of power on the part of the municipality to issue bonds, and are plainly distinguished from cases like the one at bar, in which there was ample power on the part of the municipality to issue bonds, and the only question in dispute is and can be not a lack of power, but simply, according to the only possible theory of a defense, to them an abuse of the power conferred by issuing in excess of the limitations.

We are aware that the defense is on the theory that these bonds are void by reason of a total lack of power to issue them, but we think there is nothing in this defense, and, as it is fully noticed in another branch of the argument, need not be referred to here.

No attempt was made to enjoin the execution of these bonds. They submitted to taxation and allowed the interest to be paid for a period of four years and amounting to $5,600 by the officers of the district without objection, and last they received and kept the proceeds, amounting to $20,000, and have used the same for the benefit of the school district in the payment of its indebtedness existing at the time the bonds were issued.

The same doctrine is laid down in Desty on Taxation, vol. 2, page 1229, and cases cited.

But, again we claim that under the resolutions already referred to, and the recitals on the bonds, that defendant in error, being a *bona fide* purchaser of the bonds for value before maturity, as such is entitled to recover on them in this action under the law and authorities without any reference to the points heretofore mentioned and argued; that is, the recitals on the bonds in this case are such that he was not obliged to go back of them to make any inquiries ae to the validity of the bonds.

The recitals are as follows: "*This bond is executed and issued by the board of directors of said school district in pursuance of and in accordance with chapter 152, laws of the 18th General Assembly of Iowa, is in accordance with the laws and constitution of the state of Iowa, and in conformity with a resolution of said board of directors passed*

in accordance with said chapter 132 at a meeting thereof held 9th day of July, 1881.

In testimony whereof the said school district, by its board of directors, have caused this bond to be signed by the president and attested by the secretary this 11th day of July, 1881. J. SHATSWELL, President.

LON H. WAGNER, Secretary.

It will be noticed that the recitals on these bonds are full and complete, and this being the case the purchaser was not under the decisions obliged to go back of them if a purchaser for value before maturity, without notice of defects, further than that contained in the recitals themselves, in order to be protected and entitled to recover.

A case much cited is that of *Commissioners of Knox County vs. Aspinwall*, 21 Howard, 539. The court says: "A purchaser need not look beyond the recitals in the bond. The purchaser was not bound to look further for evidence of a compliance with the conditions to the grant of power," and quoting *Royal British Bank vs. Torquand*, 6 Ell. & Bl. 327.

In case of *Mercer County vs. Hackett*, 1 Wall. 83, it is said: "The bonds on their face declare that the faith, credit and property of the county are solemnly pledged under the authority of certain acts of assembly, and that in pursuance of said acts the bonds were signed by the commissioners of the county. They are on their face complete and perfect, exhibiting no defect in form or substance; and the evidence offered is to show the recitals on the bonds are not true; not that no law exists to authorize their issue, but that the bonds were not made in pursuance of the acts of assembly authorizing them."

The court further says in this case: "Where municipal bonds on their face import compliance with the law, a *bona fide* purchaser need not look further. In the case of *Town of Colloma vs. Eaves*, 2 Otto 484, the point is so squarely decided and the decisions reviewed "that we quote at length, commencing on page 490: And the bonds themselves recite that they 'are issued

under and by virtue of the acts of incorporating the railroad company,' approved March 24, 1869, 'and in accordance with the vote of the electors of said township of Colloma, at a regular election held July 26, 1869, in accordance with said law.' After all this it is not an open question, as between a *bona fide* holder of the bonds and the township, whether all the perrequisites to their issue had been complied with. *Apart from, and beyond the reasonable presumption that the officers of the law, the township officers discharged their duty*, the matter has passed into judgment. The person appointed to decide whether the necessary perrequisites to their issue had been completed have decided and certified their decision. They have declared the contingency to have happened on the occurrence of which the authority to issue the bonds was complete. Their recitals are such a decision, and beyond these a *bona fide* purchaser is not bound to look for evidence of the existence of things *in pais*. He is bound to know the law conferring upon the municipality power to give the bonds on the happening of a contingency, but whether that has happened or not is a question of fact, the decision of which is by the law confided to others—to those most competent to decide it—and which the purchaser is, in general, in no condition to decide for himself."

This we understand to be the settled doctrine of this court. Indeed, some of our decisions have gone further. In the leading case of *Knox vs. Aspinwall*, 21 How. 544, the decision was rested upon two grounds. One of them was that the mere issue of the bonds, containing a recital that they were issued under and in pursuance of the legislative act, was a sufficient basis for an assumption by the purchaser that the conditions on which the county (in that case) was authorized to issue them had been complied with; and it was said that the purchaser was not bound to look further for evidence of such compliance, though the recital did not affirm it. This position was supported by reference to *Royal British Bank vs. Torquand*, 6 Ell. & Bl. 327, a case in the Exchequer Chamber, which fully sustains it, and the decision in

which was concurred in by all the judges. This position taken in *Knox v. Aspinwall* has been more than once reaffirmed in this court. It was in *Moran vs. Miama County*, 2 Black 732; in *Mercer County vs. Hackett*, 1 Wall 83; in *Supervisors vs. Schenk*, 5 Id. 784, and in *Mayor vs. Muscatine*, 1 Id. 384. It has never been overruled; and whatever doubts may have been suggested respecting its correctness to the full extent to which it has sometimes been announced, there should be no doubt of the entire correctness of the other rule asserted in *Knox vs. Aspinwall*. That, we think, has been so firmly seated in reason and authority that it cannot be shaken.

In *St. Joseph' Township vs. Rogers*, 16 Wall. 644, it is stated thus:

"Power to issue bonds to aid in the construction of a railroad is frequently conferred upon a municipality in a special manner, or subject to certain regulations, conditions or qualifications; but if it appears by their recitals that the bonds were issued in conformity with these regulations, and pursuant to those conditions and qualifications, proof that any or all of these recitals were incorrect will not constitute a defence for the corporation in a suit on the bonds or coupons, if it appears that it was the sole province of the municipal officers who executed the bonds to decide whether or not there had been an antecedent compliance with the regulation, condition or qualification, which it is alleged was not fulfilled."

In the case of *Buchanan vs. Litchfield*, 102 U. S. 278, where the question was whether the issue was in excess of the amount authorized to be issued, and where the court held the recitals in the bond were not such as to estop the city, they say:

"Had the bonds made the additional recital, that they were issued in accordance with the constitution, or had the ordinance stated, in any form, that the proposed indebtedness was within the constitutional limit, or had the statute restricted the exercise of the authority therein conferred to these municipal corporations whose indebtedness did not at the time exceed the constitu-

tional limitation, there would have been ground for holding that the city could not, as against the plaintiff, dispute the fair inference to be drawn from such recitals, as to the extent of the existing indebtedness."

The bond contains a recital that "this bond is executed and issued by the board of directors of said school district in pursuance of, and in accordance with, chapter 132, laws of the 18th General Assembly of Iowa, *and is in accordance with the laws and constitution of the state of Iowa*."

The court will notice that the language used in the recital in the bond is identical with the language made use of by the court in case of *Buchanan vs. Litchfield, supra*. They say in effect, "had the bonds made the additional recital that they were issued in accordance with the constitution" such recital would amount to an estoppel.

In the case of *Northern Bank vs. Potter Township*, 110 U. S. page 608, the court held that "the facts which a municipal corporation issuing bonds in aid of a railroad is not permitted against a bona fide holder, to question, in the face of a recital in the bond of their existence, are those connected with, or growing out of, the discharge of the ordinary duties of such of its officers as were invested with authority to execute them, and which the statute confering the power made it their duty to ascertain and determine before the bonds were issued."

In the case of *Block vs. Commissioners*, 9 Otto 686, the court again decides that "a bona fide purchaser of municipal bonds for a valuable consideration, who had no actual notice of any defence which could be set up against them, is not bound to look further than to see that there was legislative authority for their issue, and that the officers who were thereunto authorized have decided that the precedent condition upon which it was allowed to be exercised have been fulfilled. If such authority was conferred and such a decision made the bonds are valid obligations which he may enforce."

In the case of *Marcy vs. Township of Oswego*, 92 Wal-

lace U. S. 639, the defense was that at the time of voting and issuing the bonds the value of the taxable property of the township was not in amount sufficient to authorize the voting and issuing of the whole series thus issued. The bonds recited that they were issued by virtue of a certain act, and in pursuance of, and in accordance with, the vote of three-fifths of the legal voters of said township, at a special election held on a day therein named. It was attempted to be shown, as against an innocent holder of the coupons, that when the bonds were voted, the taxable property of the township was not sufficient to authorize the issue of the whole series of the bonds voted.

The court below held that such facts could be shown to defeat a recovery. The supreme court reversed the case, and in their opinion say: "The existence of sufficient taxable property to warrant the amount of the subscription and issue of bonds was no more essential to the exercise of the authority conferred upon the board of commissioners, than was the petition for the election, or the fact that fifty free holders had signed, or that three-fifths of the legal voters had voted for the subscription. These are all extrinsic facts bearing, not so much upon the authority vested in the board to issue bonds, as upon the question whether the authority should be exercised. They are all by the statute referred to the inquiry and determination of the board, and they were all determined before the bonds and coupons came into the hands of the plaintiff. *He was, therefore, not bound when he purchased to look beyond the act of the legislature and the recitals which the bonds contained.*"

In that case the power existed to issue bonds, but the act limited by express terms the amount, and prohibited an issue in excess thereof. The commissioners, as it was attempted to be shown, had exceeded the limit in issuing the bonds in question, in direct violation of the act, but the supreme court held that the bond reciting the issuance by virtue of a vote of the electors under the act which authorized it, the holder was not bound to inquire further, nor to examine the records to ascer-

tain whether the commissioners had exceeded their powers. So in this case the power to issue the bonds existed and the bonds recited all the necessary precedents, and plaintiff, under the law, was not called upon to inquire further.

In the case of *Potter vs. Board of County Commissioners of Chaffie County*, 33 Fed. 614, a case decided in the Eighth circuit in the district of Colorado, Judge Brewer, who rendered the decision, after citing the statutes of Colorado, giving the power to issue the bonds, uses the following language:

"In pursuance of that act, the county of Chaffie issued these bonds, which contained full recitals, showing compliance with all the provisions of that act. It is unnecessary to read them. And the question is, whether the county is not estopped by those recitals from presenting this defense. The act does not limit the issue of bonds; that is, it does not place any amount, any numbers as the limit which any county may issue. It authorizes the funding of the floating indebtedness. Of course, that means the valid indebtedness. It gives to the county commissioners the duty of issuing these bonds, and exchanging them at par for the outstanding warrants, and the limitation, and only limitation placed in the act, is that the whole amount of bonds issued under this act shall not exceed the sum of the county indebtedness at the date of the first publication of the notice, and that amount is to be determined by the county commissioners, and a certificate made of the same, and made a part of the records of the county. The duty is placed upon the county commissioners of determining the amount. The legislature does not prescribe it. This bond, which purports to be one of a series, nowhere upon its face contains any statement of the amount of bonds issued, or to be issued, by that county; no one upon examination of one bond could say whether one thousand or a hundred thousand dollars were, or were to be, issued by the county. It refers to the act, declares it is issued in pursuance of the act, and upon the proper election having been held."

Now this question of the effect of recitals in a bond, as estopping the county or municipality, has been again and again considered by the supreme court, and until the decision in the case of *County of Dixon vs. Field*, 111 U. S. 83, which is relied upon by the defendant, I suppose the universal voice of the bar would affirm that the supreme court had settled, beyond any questions, that recitals as full and complete as these estopped a county from denying the validity of the bonds in the hands of a bona fide purchaser. It has been supposed by some that this case of *County of Dixon vs. Field* has reversed prior decisions, and established a new rule. I am frank to say that I think it is quite difficult to appreciate the distinction which Mr. Justice Matthews draws between that case and the case of *Marcy vs. Township of Oswego*, 92 U. S. 637; but even with the rule as laid down in *County of Dixon vs. Field*, it will not avail the defendant in this case.

Turning to the case of *Buchanan vs. Litchfield*, 102 U. S. 273, where the question was whether the issue was in excess of the amount authorized to be issued, and where the court held that the recitals in the bond were not such as to estop the city, they say: "Had the bonds made the additional recital that they were issued in accordance with the constitution, or had the ordinance stated, in any form, that the proposed indebtedness was within the constitutional limtis, or had the statute restricted the exercise of the authority therein conferred to those municipal corporations whose indebtedness did not at the time exceed the constitutional limitation, there would have been ground for holding that the city could not, as against the plaintiff, dispute the fair inference to be drawn from such recital, or statement, as to the extent of the existing indebtedness."

Then, passing to the case of *Bank vs. Porter Twp.*, 110 U. S. 608, 4 Sup. Ct. Rep. 254, the court decided that "the facts which a municipal corporation issuing bonds in aid of a railroad is not permitted, against a bona fide holder, to question, in the face of a recital in the bond of their existence, are those connected with, or

growing out of, the discharge of the ordinary duties of such of its officers as were invested with authority to execute them, and which the statute conferring the power made it their duty to ascertain and determine before the bonds were issued."

Here the statute in terms gave the county commissioners, not merely the power to issue these bonds and exchange them for warrants at par, but the power of determining the amount they should issue. That was one of the matters within their ordinary duties, and which they were invested with authority to ascertain and determine. Now when we come to this case of *County of Dixon vs. Feld*, 111 U. S. 83, 4 Sup. Ct. Rep. 315, we find these to be the facts:

The constitution prescribed a limitation, that the amount should not be over 10 per cent. I believe, of the assessed valuation—the amount is immaterial. That was a constitutional limit of the amount that could be issued, and that limit was a limit based upon the assessed valuation. The county of Dixon issued a series of bonds which, on their face, showed that the issue was $87,000. Every bond, therefore, carried notice to the purchaser that the issue of bonds made by the county was $87,000; and it was held that that being apparent upon the face of the bonds, the purchaser was also charged with notice of the amount of the assessed valuation of the property in the county; it was a matter of which the county commissioners could not and did not determine. It was a matter over which they had no control, and the recital of fact of which they had no control, no authority to determine, was not such a recital as estopped the county. So the purchaser, informed by the face of the bond of the amount of the issue, and charged with notice of the amount of the assessed valuation, took the bond with notice of its invalidity. But in this case there is nothing upon the face of the bond which shows how many bonds were to be issued, how large the series was. The statute, in terms, gave to the county commissioners the power to determine the amount to be issued, and no man could, by an

examination of the bond, get any information as to the amount of the issue, or by comparing any information given by the bond with the record notice of the assessed valuation, know that the county had exceeded its power in the issue of the bond. So that, taking the case of *County of Dixon vs. Field* as the latest annunciation of the supreme court in respect to the rule of decision, it must be held that the county is estopped from pleading in this case that the bond was issued for a void warrant.

The same doctrine is laid down in Daniels on Negotiable Instruments. See sections 1539 to 1543 inclusive, 3 ed., 550 to 558.

Desty, in his work on Taxation, lays down this general rule: "The rights of *bona fide* holders of bonds issued in aid of railroad construction will be protected, and only where there are indications of fraud in their inception will the holder be required to prove that he purchased for value. Such bonds are deemed negotiable instruments, and the bodies issuing them are estopped to deny their validity in the hands of *bona fide* holders." See 2d Desty, 1225.

It will be seen that this author makes no exceptions except that in case of indications of fraud the holder will be required, in order to make his case, to prove that he gave value for the bonds, and though in this case no question of fraud in the issue of the bonds is raised it is conceded and shown by the findings that plaintiff paid the full face value of the bonds. And this rule given by Desty is fully supported by reason and by numerous authorities cited by him, as well as by those already referred to, and the additional ones hereafter cited in this argument.

This same author also, on page 1222, says that bonds are only void in the hands of a *bona fide* holder when there is a total want of authority to issue them, and we have already shown that in the case at bar no question is or can be raised as to the power to issue bonds.

In Murfrees on Official Bonds, the language used by this author is very apt, and we think decisive of this

question. Section 111 says: "The holders of county bonds duly authenticated and issued by the county, and acquired in due course of trade, are not charged with notice of the financial condition of the county, nor required to know or inquire whether the bonds were issued *ultra vires* of the county being in excess of the constitutional limit of its indebtedness. Where the constitution of the state limited the power of the counties to contract indebtedness to five (5) per cent of the assessed value of taxable property in the county, and a county nevertheless issued warrants in excess of that amount, and subsequently replaced these warrants with negotiable bonds, those bonds, when in the hands of innocent purchasers, were held to be good against the county, although the debt which they represented had been unconstitutionally contracted."

The language used by the author is fully supported by the cases of *S. C. & St. P. Ry. Co. vs. Osceola County*, 52 Iowa, 26, and same 45, Iowa, 168. These cases are referred to at length in another portion of the argument.

In section 112 of same work this author makes the distinction between absence of power and defective exercise of it. He says: "With all the privileges of a *bona fide* holder of county bonds, he is nevertheless bound to see that the county had under the constitution and laws of the state the power to issue bonds at all. It is not incumbent on him, as already stated, to examine the county records, see how much is the assessed value of taxable property in the county, and how much debt the authorities have contracted on the faith of it; if the officers have the power to issue bonds at all he may safely presume that they have done their duty and kept within the prescribed limits. It is otherwise if no power at all to issue the bonds exists in the county officers or those of a township, because no election has been held as required by law. In such case the bonds are simply void, and the fact that the town is authorized to donate money to a railroad company, and to levy a tax to raise it, does not in the slightest degree mend the matter, for the power to donate money or levy a tax is not equiva-

lent to the power to issue negotiable bonds, and does not include the latter power. The rule is that when there is an entire absence of power as distinguished from defective execution of a power, then the recital of those invested with the ministerial duty of issuing municipal bonds will afford no protection to even *bona fide* holders for value of such bonds."

For the convenience of the court, we will here give the principle decisions in the United States circuit and supreme courts in which this doctrine has been reiterated and affirmed:

Moran vs. Meama County, 2 Black, 722–724.
Bissell vs. Jeffersonville, 24 Howard, 287.
Mercer County vs. Hackett, 1 Wall. 83.
Meyer vs. Muscatine, 1 Wall. 385–393.
Van Hortrop vs. Madison City, 1 Wall. 291.
Gelpcke vs. Dubuque, 1 Wall. 175–203.
Rogers vs. Burlington, 3 Wall. 354.
Supervisors vs. Schenck, 5 Wall. 772.
Lexington vs. Butler, 14 Wall. 284.
Grand Chute vs. Winegar, 15 Wall. 572.
St. Joseph Twp. vs. Rogers, 16 Wall. 644.
Pendelton County vs. Amy, 18 Wall. 297.
Coloma vs. Eaves, 92 U. S. 484.
Venice vs. Murdock, 92 U. S. 494.
Moultrie vs. Savings Bank, 92 U. S. 631.
Randolph vs. Post, 93 U. S. 502.
Leavenworth vs. Barnes, 94 U. S. 70.
Douglas County vs. Bolles, 94 U. S. 104.
Johnson County vs. Thayer, 94 U. S. 631.
Cass County vs. Johnson, 95 U. S. 360.
San Antonia vs. Mehaffey, 96 U. S. 312.
Warren vs. Marcy, 97 U. S. 96.
Hackett vs. Ottawa, 99 U. S. 86.
Schuyler County vs. Thomas, 98 U. S. 169.
Anthony vs. Jasper County, 101 U. S. 693.
Pompton Twp. vs. Cooper Union, 101 U. S. 196.
Buchanan vs. Litchfield City, 102 U. S. 278.
Harter vs. Kernochan, 103 U. S. 683.
Bonham vs. Needles, 103 U. S. 648.

Walnut vs. Wade, 103 U. S. 683.
Clay County vs. Savings Society, 104 U. S. 579.
Moultrie County vs. Fairfield, 105 U. S. 370.
American L. I. Co. vs. Bruce, 105 U. S. 328.
Toledo Bank vs. Porter, 110 U. S. 608.
Knox County vs. Aspinwall, 21 Howard, 539.
Town of Colloma vs. Eaves, 92 U. S. 484.
Sherman County vs. Simons, 109 U. S. 735.

This last case has been reviewed and cited at length on another branch of the argument.

The following cases in the United States circuit court hold the same:

Bur vs. Chariton County, 12 Fed. Rep. 348.
Rouede vs. Mayor of Jersey City, 18 Fed. Rep. 719.
Davis vs. Kindallville, 5 Biss. 280.
Miller vs. Town of Berlin, 13 Blatch. 245.
Milner vs. City of Pensacola, 2 Woods, 632.
Marshall vs. Elgin, 3 McC. 35.
Pollard vs. Pleasant Hill, 3 Dill. 195.
Woodward vs. Board of Sup'rs of Calhoun Co. 2 Cen. Law Journal, 398.
Newboy vs. St. Clair County, 3 Dill. 163.
Servis vs. The Board of Co. Com'rs, 2 McC. 464.
Johnson vs. City of Plattsmouth, 3 Dill. 175.
Cronin vs. Patrick County, 4 Hughes, 524.
Huidekoper vs. Buchanan County, 3 Dill. 175.
Bonham vs. Board of Education, 4 Dill. 156.
Potter vs. Board of County Com'rs of Chaffee Co. 33 Fed. Rep. 614.

The following cases in the supreme courts of the various states also hold the same:

Deming vs. Inhabitants of Houlton, 64 Me. 254, 18 A. R. 253.
State Ex. Rel. Robb vs. Commissioners of Kiowa Co. 39 Kan. 657, 7 A. S. R. 569.
State of Missouri Ex. Rel. Neal vs. Saline County, 43 Mo. 390, 8 A. R. 108.
Farmer etc. Co. vs. Curtis, 7 N. Y. 466.
Wilmarth vs. Crawford, 10 Wend. 343.
Alleghany City vs. McClurkan, 14 Penna. St. 83.

S. C. etc. Co. vs. Osceola County, 52 Iowa 26.
Same vs. Same, 45 Iowa 163.
Seyball vs. National Bank, 54 N. Y. 288.

And in conclusion it will be enough to say that the equities of the plaintiff in this case are so strong, the findings showing conclusively that he has bought the bonds before maturity in open market, without any notice except as given by the recitals on the bonds themselves, has paid for them the full face value, the money paid has been used by the district in the payment of indebtedness existing against it at the time the bonds were issued, they have recognized the legality of them by the levying of taxes and the payment of interest, and justice and equity certainly declare that the district should be held liable and be compelled to pay this liability. And we respectfully ask that the court affirm the decision of the circuit court.

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Attorneys for Defendants in Error.

Office Supreme Court U. S.
FILED,
JAN 6 1891
JAMES H. McKENNEY

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 1430.

THE DISTRICT TOWNSHIP OF DOON, IN LYON COUNTY, STATE OF IOWA, PLAINTIFF IN ERROR,

vs.

THERON CUMMINS.

In Error to the Circuit Court of the United States for the Northern District of Iowa.

REPLY OF PLAINTIFF IN ERROR TO ARGUMENT OF DEFENDANT IN ERROR.

P. C. Kenyon, Law Brief Publisher, 506-508 Locust st., Des Moines, Iowa.

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We have before us the brief of the defendant in error, and proceed to notice the respective propositions contained therein as briefly as may be. First, we call attention to a number of errors of fact which occur in the enumeration of points as to which it is alleged there will be controversy, to which statement we beg to demur. The summary of these propositions of fact will be found at pages 7 and 8 of the argument of the defendant in error.

1. It is stated in the first proposition that the resolution of the board discloses that there is a "bonded judgment debt" upon the district of Doon, etc. The correct statement of this

would be that the resolution of the board recited simply this: "That as there is a large bonded judgment debt upon the dis- "trict of Doon," etc. Just what was meant by the board of supervisors in this recital that there was a large bonded debt is not clear, nor is it shown by the record. It is sufficient to say that the act of the legislature under which the bonds were issued simply authorized the refunding of bonded debt, and the record does not disclose what amount, nor whether any, of the outstanding bonds were issued upon judgments, nor is it material to the questions here involved, because the court below held, and the defendant in error contends, that it is wholly immaterial what use was made of the proceeds of the new bonds.

2. The second, third and fourth propositions there referred to are substantially correct, the fourth one not stating, however, the whole truth as found by the court below, which is that the plaintiff, when he bought the first $10,000 of bonds, knew that it was the purpose of the district to issue $25,000 of bonds if necessary, and not less than $20,000. See printed abstract, fifth finding of facts, from which we quote as follows: "When "plaintiff purchased the first block of $10,000 of bonds in July, "he knew it was the purpose of defendant to issue at least "$20,000, and $25,000 if necessary."

3. The fifth proposition of fact referred to by defendant in error is correct only in part. The last two lines of it should be eliminated as wholly without support in the record.

4. The sixth proposition, if by it is simply meant that the defendant district has not returned to the plaintiff any portion of the amount it received for the sale of these bonds, is correct.

5. The seventh proposition of fact is incorrect. The proceeds of the $25,000 issue, in controversy here, were used in taking up warrants, school orders, contingent fund orders, etc., to the extent of $19,000, as shown by the treasurer's report, made a part of the thirteenth finding of facts, while the use made,

if any, of the remainder of the proceeds, about $6,000, is not disclosed in the report.

We make these corrections so that there may not be any misapprehension as to the facts found by the court below, although some of the matters may be regarded as immaterial.

We beg now to notice the positions of the counsel for defendant in error:

Reference is at once made by him to chapter 132, laws of the eighteenth general assembly, and counsel in respect thereto contends that under this legislative provision, bonds cannot be issued "for the purpose of making a debt on the district or "increasing one already made."

Counsel elsewhere in his argument repeats this claim that the issuance of these bonds did not "create a debt." Counsel also contends that the use to be made of the proceeds of the bonds is wholly immaterial so far as the purchaser of the bonds is concerned; and that we may stand in no danger of mistaking his position, we beg to quote his own language, from page twenty-one of his argument. He thus states his position: "He purchased the bonds in open market and paid his "money for them to the chosen agent of the district, and "when this was done all his duty in the premises was per- "formed, and as to whether or not the proceeds were applied "to the extinguishment of the bonded indebtedness, the judg- "ments existing against the district, or whether the agents and "officers of the district applied the same to the payment of their "private debts, he had not, and could have no more to do than "would one of the native tribes whose remote ancestors at one "time claimed the soil upon which the district is located."

Thus we have the issue between us clearly defined. His statement of the law as contained in the above quotation is just the position taken by the court below, as we have already shown by quotations from the opinion contained in our original argument. See printed abstract, page 8, and our argument, pp.

9 and 10. But we call attention to the two positions of counsel for defendant in error to which we have just referred, as being wholly at war with each other.

First, it is insisted that this issue of bonds created no debt, and, second, that it is immaterial what use is made of the proceeds of the bonds.

It is absolutely impossible that both of these propositions should be correct, for if the proceeds of the bonds are not used to pay the bonds to refund which they were issued, clearly the old bonds are not paid and continue to constitute a debt, if valid at all against the district; and if it be true that the purchaser of the last series is not bound to see to the application of the proceeds of the bonds, then his bonds are valid and enforceable as the defendant in error contends. We, therefore, have not only the old debt, but the new, both valid. It is therefore absurd to say that no new debt is created by the new issue, which it is contended are enforceable obligations against the district, irrespective of whether the old was paid or not. Says the counsel for defendant in error, "It is wholly im-"material what may be done with the proceeds of the bonds." They may be applied by the officers of the district "to the pay-"ment of their private debts" and the bonds would yet be binding upon the district. It is therefore impossible that these positions of the defendant in error should be correct, and yet they are substantially the positions of the court below. For the position was taken by that court, first, that these bonds being issued for the avowed purpose of refunding other bonds, the effect thereof was not to increase the debt. That we may show absolutely that we are correct upon this point we beg to quote from the opinion of the court below (printed abstract, page 6): "The refunding of an existing and enforceable debt cannot be "said to be increasing the indebtedness, and a mere change of "the evidence of the debt from one bond to another, or from a "judgment into a bond, is not within the constitutional inhibi-

"tion." We have already quoted from the opinion of the court below in our first argument, pp. 8, 9 and 10, to show the correctness of our statement of the view of that court as to the immateriality of the use made of the proceeds.

It is therefore thus demonstrable that these propositions cannot stand. In fact neither of them is tenable under a constitutional limitation like ours. It must be remembered that in dealing with this constitutional limitation all acts of the legislature in respect to the subject must be held to be, as we stated in our opening argument, subordinate to the constitutional inhibition, and they must be interpreted accordingly, and if found in conflict therewith the constitution must, of course, prevail. But it is manifest that the legislation itself can be given application and yet operate *within* the constitutional limitation. These legislative provisions are merely operative as to the subject of refunding bonds *within* the constitutional limitation, and they can be made to so operate, but they cannot be made instruments for overriding the constitution. We observe therefore, first, that it is not a correct proposition to say that the issuing of these bonds created no debt. If these bonds create no debt it is because they are not enforceable against the district in this suit at law. It is immaterial whether they create a new debt or not, so far as this suit is concerned. If they are enforceable obligations they are evidence of a debt upon which it is asked that a judgment be rendered. It is wholly fallacious to say that these bonds create no debt and at the same time ask for a judgment to be entered thereon against the district. As well might it be said that the judgment evidenced no debt, and such would not be claimed. If the bonds evidence a debt, they evidence a debt as of their date. They constitute a new obligation of the district payable at a different time, under different conditions, bearing a different rate of interest, with different covenants and obligations, and upon them if valid, a suit at law can be maintained. It is in fact a new debt, a new obligation,

with new covenants, different times of performance, and a different instrument in every particular. To show a little further the fallacious reasoning of our friends on the other side we beg to quote from their argument, page 20:

> That the issue of these refunding bonds to take up and pay off a preëxisting bonded indebtedness is not the creating of a new debt or the increasing of one already in existence, would seem to be axiomatic.

This proposition, which is laid down by counsel as "axiom-"atic," contains, when examined, even casually, the most manifest error. It is not the issuing of new bonds to refund an old bonded debt which *refunds* that debt. Counsel probably mean to say, that the issuing of refunding bonds to take up and pay off a preëxisting bonded indebtedness, *and the proceeds of which are so used*, is not the creation of a new debt. The proposition thus stated would, as we submit, be incorrect, for it is nevertheless the creation of a new debt, though its effect may be to pay an old one when the transaction is fully consummated, but it is still a new debt. The old debt and the new are different things. But the italicized portion of the above proposition is just the one that is utterly ignored, not only by counsel for defendant in error, but, as we respectfully submit to this court, by the learned district judge in his decision in this case in the court below.

Counsel have not quite fairly treated section two of the legislative act under which these bonds were issued. They have, in fact, misstated its contents as well as misstated the facts, as found by the court below. In referring to the report of Richards they say that it "shows that the bonds were used to pay "off the bonded and judgment indebtedness existing at the time "of the issue of the bonds, and the application of the money "was in direct accordance with the provisions of the act, sec-"tion two, providing that the proceeds of the sale of the bonds "shall be used for no other purpose than to pay off the bonded "and judgment indebtedness of the district, and this, it is

"shown, was the use made of the money." (This is a quotation from pages 22 and 23 of the argument for defendant in error.) This extract contains two misstatements of fact.

1. It is not shown by the report, nor is it true, that the proceeds of these bonds were used to pay off bonded and judgment indebtedness. On the contrary there was only a few hundred dollars, the items of which are shown in the report, used to pay judgments. That only $2,900 were used to pay bonds, was fully shown in our argument and is admitted. The remaining proceeds of the bonds, in so far as they were used at all (about $6,000 not being used), was used to pay warrants, school orders, contingent fund orders, school-house fund orders, etc., etc., purposes confessedly foreign to the legislative act under which they were issued. Many of these warrants and orders the court found to have been fraudulent. The finding of the court below as to the purposes for which this money was actually used, is thus stated by the court itself in its finding (see printed abstract, page 13):

> Richards, on the 6th day of May, 1882, made a report to the board of directors of defendant, which was accepted and approved, showing that he had paid out the sum of $19,174 in taking up bonds, coupons, judgments, warrants and orders drawn on the teachers' contingent and school-house funds. The balance in his hands of $6,485.79 was paid to the treasurer of the defendant. The report so made is as follows:

Following this is the report of Richards, itemized and showing what we have already stated; and this is not denied by counsel for defendant in error, and, indeed, could not well be, for it is the finding of the court below. But the court held that while only a small portion of the old bonds were in fact paid by the new, that the use to which the proceeds of the new bonds was applied "was wholly immaterial," and did not affect the rights of the plaintiff in any degree, and herein consists the fundamental error of the court below as we attempted to show in our written argument, and as we think, beyond the power of successful

refutation, and the counsel for defendant in error, as we respectfully submit, have scarcely attempted its refutation.

But counsel, in the extract from their argument quoted above, have also misstated section 2 of the legislative act. They have stated, as shown above, that section 2 authorizes the use of these bonds to pay off the bonded and judgment indebtedness of the district. Counsel certainly made this statement incautiously, and without looking at the act itself, and yet this is somewhat inexcusable, because they have quoted the act. Section 2 will be found at page 3 of their brief, in which it is expressly provided that these bonds shall be used for no other purpose than the funding of outstanding *bonded* indebtedness. There is little excuse for the statement of counsel that this statute authorizes by its express terms the funding of judgment indebtedness, and there is scarcely more excuse for their statement that it was so used, for the finding of facts and the report of Mr. Richards attached thereto are directly to the contrary. Counsel, therefore, are not able to plant themselves upon any showing that the proceeds of the bonds were in fact used to refund the bonded debt of the district, for the court has found to the contrary, and has expressly held, and based its judgment upon that ruling, that the use made of the proceeds of the bonds is wholly immaterial. Being held to be immaterial by the court below, the judgment rendered against the district, if the court was in error as to that proposition, was necessarily erroneous.

Counsel stands in great fear lest the legislative act should be impaired in its effects by the constitutional limitation. We beg again to reproduce his proposition in his own language. We quote from page 12 of his brief:

> If the position taken by the district in the argument in this case is correct, then we have this remarkable state of affairs, that is, the legislature has passed a law for the express purpose of allowing school districts to issue bonds for the purpose of placing their indebtedness at a lower rate of interest, rendered nugatory, because they had, at the time of attempting to exercise the power, an indebtedness of, say (for illus-

tration) $10,000, which is the full amount they can incur by reason of the limitation; and this issuing of this amount in bonds under this law for the express purpose of taking up this indebtedness is an increasing of their indebtedness to $20,000, which is double what they can legally incur. In other words, no school district that has existing an indebtedness up to the amount of the constitutional limitation can avail itself of the law, for the reason that bonds issued by it, no matter how small, would increase the indebtedness beyond the constitutional limit, and consequently be void, even in the hands of *bona fide* holders, and notwithstanding the recitals contained in them; but this is not the law.

Counsel is so frank in his statement of his position, that we find no stronger way of refuting it than to hold it up in his own language, that it may be fairly seen and fully understood. The reply to this proposition is found in our opening argument. But it is strange that counsel should have wholly overlooked the fact that, in their anxiety to give free and full scope to this legislative act, they utterly ignore the constitution itself. We cannot but admire the confidence with which they state these manifestly erroneous propositions of law, but surely they cannot hope for their adoption by this court. We have already shown, clearly we think, that it is no hardship upon the purchaser of refunding bonds to be compelled to see that the old bonds, upon the surrender and payment of which the validity of the new depend, are surrendered and canceled cotemporaneous with the issuing of the new, just as every loan company in the United States in loaning money on real estate, the proceeds of which are to be used, as in most cases they are, to pay prior incumbrances, is able to see, without regarding it as any special trouble, that the proceeds of the new loan are paid to the holder of the old, contemporaneous with the delivery of the new mortgage.

But if there were even difficulties of any insurmountable character in the way of refunding outstanding bonds where the constitutional limitation has already been reached and exceeded, it would furnish no reason whatever for a plain and palpable

violation of the constitution. This was expressly held by this court in the cases of

Lake County vs. Rollins, 130 U. S., 662.
Lake County vs. Graham, 130 U. S., 674.
Dixon County vs. Field, 111 U. S., 95.

All of which were cited in our opening brief.

Defendant's counsel seem to wholly overlook the rights of the people who made the constitution, and the protection to which it justly entitles them, in their eager desire to sustain bonds of any character whatever. The defendant school district has obligations in form outstanding against it to an amount of nearly $40,000. The county of which it is a part has outstanding obligations in form amounting to about $250,000. The net result is that the territory embracing and constituting the defendant school district is in form mortgaged for about one half of the value of its property. The people who reside within this area are entitled to the protection of the constitution of the state, and they appeal to this court to protect their farms and their homes from the profligacy, extravagance, wastefulness and positive fraud of unworthy officials, aided by the eagerness of over-anxious investors to secure large interest returns upon questionable investments. In no other way can these people, who are compelled to toil daily on their farms, and have the right to rely upon the protection of the positive provisions of the most solemn instrument known to our system of government, be protected from that measure of taxation which amounts to confiscation. Certainly no device, legislative or otherwise, will be tolerated which opens wide the door to such disasters.

Counsel fell into another serious error in saying that the evidence showing that the bonds in question largely exceeded the last preceding state and tax list is immaterial and has been so held. To sustain this remarkable claim they quote a syllabus

from the case of *Miller vs. Nelson*, in 64 Iowa, 458. The syllabus of a reporter, who too frequently does no more than casually glance at an opinion, and sometimes not so much as that perhaps, is never regarded as very high authority. The absurd statement of the syllabus has never been held to be law by any court. The fact that it is cited by counsel is a very frank admission that he can find nothing in the case itself to his advantage. The case itself was not a suit upon bonds, but was a suit for specific performance of an oral contract to convey certain real estate under circumstances which took it out of the operation of the statute of frauds. Among other articles of property that the defendant agreed to accept in part payment for the land was a $500 municipal bond. It was claimed by the defendant that the bond was worthless, and the court held that the burden of proof was upon him to show it. It has nothing whatever to do with the question involved in the case at bar.

The case of the *Sioux City & St. Paul Railway Co. vs Osceola County*, in 45 Iowa, 168, we discussed fully in our opening brief, and counsel do not question the correctness of our analysis of the opinion in that case, or of the question there presented and decided. The case of the same company against Osceola County, 52 Iowa, 26, is misstated, doubtless unintentionally, by counsel for defendant in error. It simply reaffirms the other case in the 45th Iowa, except that instead of holding all of the indebtedness in question valid it holds all of the indebtedness that was not issued directly upon the judgment and in payment of it under the provision of the statute we quote in our opening brief (see page 14), to be absolutely null and void, reaffirming the absolute nullity and invalidity of any paper, negotiable or otherwise, issued in violation of the constitutional provision. The case was one brought to restrain the levy of a tax issued to pay certain indebtedness. That portion of the tax necessary to pay the interest on certain judgment bonds issued in payment of the judgment, that is, issued directly upon and in payment

of the judgment, under the provisions of the statute above referred to, was declared good. The tax issued to pay all other obligations was declared void because the debt was void, including the tax levied to pay interest on funding bonds. The supreme court of the state, on appeal, affirmed the ruling of the court below on both points. The case is between the same parties as those concerned in the case reported in 45th Iowa, 168, which it follows. Judge Beck in both cases dissents, holding that even a judgment bond will not be valid where the debt is incurred in violation of the constitution, even though the bonds have passed into the hands of an innocent holder. But it will be remembered that the bonds that were sustained in this case, as well as in the former case, were issued directly upon the judgment itself, under the section which provided that as one of the means by which the county might pay a judgment obtained against it, it might give the plaintiff in execution the right to receive these bonds on execution in payment and satisfaction of the judgment. What the effect would be of the issuing of bonds and their sale for the purpose of using the proceeds thereof to pay judgments that had been rendered against the district since the repeal of this statute, which was repealed in 1873, it is not necessary to determine in this case, as it does not arise; for in the case at bar the statute authorizing the issuing of bonds limited the right to issue to the one purpose of refunding other outstanding bonded indebtedness, and not to pay judgments, and in point of fact, as already seen, only three or four hundred dollars of these bonds were used to pay judgments, and only $2,900 were used to pay bonds.

We cannot account for the remarkable misstatement of the ruling of the court in this case in 52 Iowa, as found at page 14 of the argument of defendant in error. In the statement there made, that the supreme court held that the bonds issued to refund warrants and other indebtedness against the county, including the bonds issued in payment of judgments, as afore-

said, were held to be good, the counsel has simply misread the case. If they will read over once more the statement of the case itself as made by the court, which precedes the opinion of the court, they will see the action of the court below holding the tax levied for the purpose of paying all of this debt, except the judgment debt, to be of no validity whatever and utterly void, clearly disclosed and stated; and the above statement of counsel betokens the most careless reading of the case. The case of the *School District vs. Stone*, 106 U. S., 183, referred to by counsel, is exactly in point in our favor. The supreme court in that case foreshadowed the doctrine to which the members of the court were unquestionably inclined at that time, as set forth in the case of *Dixon County vs. Field*, *supra*, and in the later cases of *Lake County vs. Graham*, and *Lake County vs. Rollins*, *supra*, and it there held that no part of the issue was good, and that the bonds being illegal in part no recovery can be had against the district for any part or portion thereof at law, and this is also the ruling in the *Lake County* cases, where a $500,000 issue was declared void *in toto* at law.

II.

Counsel discuss at length the question of the effect of the recitals in the bonds as against the constitutional limitation. This point was held against them even by the court below, and is now so well settled that a lengthy discussion seems to be wholly unnecessary.

But we submit, first, that the recitals in the bonds from which the coupons in suit were detached could in no event protect the purchaser. The recital is of the most general character. It states that the bond was issued "in accordance with the laws "and constitution of the state of Iowa," etc. Language could not be more general. It would not be more general if the bond had simply stated that it was issued "in accordance with law." It does not state what the tax lists amount to It does not state

that the five per cent limit was not exceeded, or that the bonds were issued within it. It does not state any fact upon which the purchaser would have a right to rely any more than he had a right to rely upon a legal presumption that everything had been done according to law. This has never been held to be sufficient.

It is now most definitely settled by this court that no recitals in the bond can estop a municipality having limited powers, as against a constitutional provision which places a limitation upon that power, and which, as does ours, explicitly points the purchaser to the test of validity or invalidity. Our constitutional prohibition limits the power to five per cent of the last state and county tax lists previous to the issuing of the bonds. In this single provision the constitution does three things:

1. It fixes the percentage of indebtedness that may be permitted, and prohibits the incurring of indebtedness beyond that percentage.

2. It points all to the state and county tax lists as the means of obtaining the assessed valuation.

3. It refers to the precise state and county tax lists which govern and affect the validity of the particular issue proposed to be issued or offered for sale. It is the "last state and county "tax list next preceding the issue," to which the purchaser and everyone must look.

Counsel for defendant in error refer to a decision by Judge Brewer, in the case of *Butler vs. The Board of County Commissioners of Chaffee County*, reported in the 33 Federal Reporter, page 614. This decision is clearly distinguishable from the *Dixon County* case, as was held by Judge Brewer himself. In the case decided by Judge Brewer, he distinguishes the case from the *Dixon County* case, upon the ground that in the *Dixon County* case the issue of bonds was, in itself, in excess on the constitutional limit, and the bonds so showed,

while in the case before him there was nothing to show what the amount of the issue was.

If we apply this distinction to the case at bar we find that the plaintiff, in the first instance, bought $10,000 himself of the bonds, and at the same time knew of the purpose of the defendant to issue $25,000 in all. The $10,000 was, in itself, nearly twice the constitutional limitation, the $25,000 about four times that amount. So that the plaintiff knew the amount of bonds the district proposed to issue and that the amount actually purchased by him, in the first instance, was in and of itself more than the amount that could be lawfully issued within the constitutional limit. Therefore, within the principle of Judge Brewer's decision, the case cannot avail the plaintiff, for he had actual knowledge of the exact facts.

But it is to be further said that the cases of *Lake County vs. Rollins* and *Lake County vs. Graham* have been decided by this court since the decision by Judge Brewer, and under the doctrine of these cases it is evident that no sort of recitals would suffice to prevail over the constitutional limitation.

But, third, plaintiff was an original taker of these bonds. He was not a purchaser of them in the sense which protects him as a transferree of bonds already outstanding. He was a party to the bonds themselves, and they were made payable to him at the time of issue. They did not become effective, as bonds, until they were delivered to him.

But, fourth, upon the findings of the court below, the plaintiff cannot claim to stand as a purchaser in ignorance of the fact that the issue, of which he bought the larger part, was largely in excess of the constitution, because, as we have already shown, the court expressly finds that defendant in error knew what the entire issue was to be, and because, furthermore, his first purchase was, in and of itself, in excess of that limit, and there is, therefore, no finding of fact upon which the plaintiff can plant himself, by which he could in any event avail himself

of the doctrine of any of the cases to which counsel for defendant refers. He knew the constitutional limit had been exceeded. There is no finding that he did not know exactly the amount of the assessment, as shown by the tax lists. There is no finding that he was not acquainted with every essential fact which rendered void this issue of bonds. Therefore, under the findings of the court below, the question of the effect of the recitals in the bonds does not arise at all, and is not in the case.

III.

Defendant in error does not controvert a number of the propositions submitted in our opening brief, and we need not give them additional emphasis here. We, in conclusion, therefore, beg leave to summarize the propositions held by the court below, and upon which the judgment against the plaintiff in error there proceeded, which we respectfully submit were erroneous.

1. There being no issue in the pleadings as to the validity of any *pre-existing* indebtedness, it is error to assume that such a question was triable or the subject matter of investigation in this suit at law.

2. In assuming that the defendant must show that the bonds against the district outstanding *prior* to the issue in controversy here were *not* the valid obligations of the district before it could make a successful defense to the bonds in controversy.

3. In holding, notwithstanding the finding, that the proceeds of the bonds were *not* used to pay the prior bonded debt, that the purpose for which the proceeds were used *was wholly immaterial*, and that the person taking the bonds *need not look further than the refunding statute, and was not bound by the use actually made of the bonds*, nor could the validity of the bonds issued to him be made to depend upon such use or misuse.

4. In holding upon the facts, which confessedly show an issue of nearly $20,000 in excess of five per cent upon the last state and county tax lists preceding such issue, that the bonds were the valid obligation of the defendant, notwithstanding the constitutional limitation had been violated.

We respectfully submit that the judgment of the court below should be reversed and a new trial awarded.

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